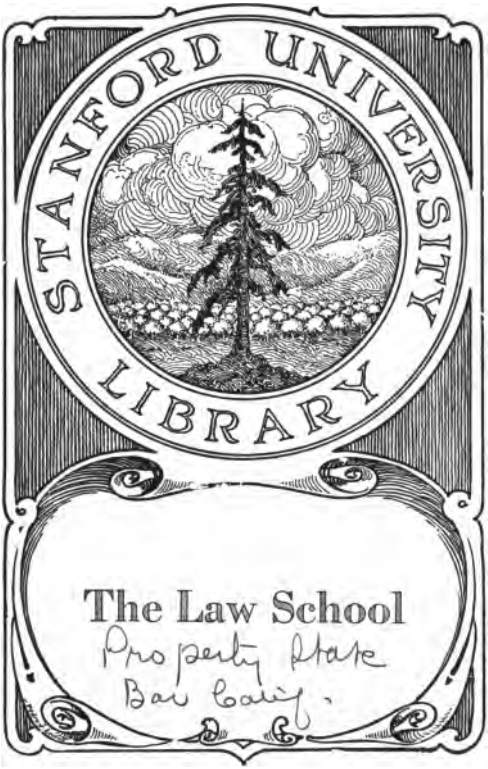
PROCEEDINGS
OF THE
TWENTY-SIXTH ANNUAL SESSION
OF THE
TEXAS BAR ASSOCIATION
1907



PROCEEDINGS

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TWENTY-SIXTH ANNUAL SESSION

OF THE

TEXAS BAR ASSOCIATION,

HELD IN THE

CITY OF BEAUMONT,

JULY 2 AND 3, 1907.

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1907.

A. E. Wilkinson

PROCEEDINGS

TWENTY-SIXTH

BAR ASSOCIATION

OF

A. E. Wilkinson

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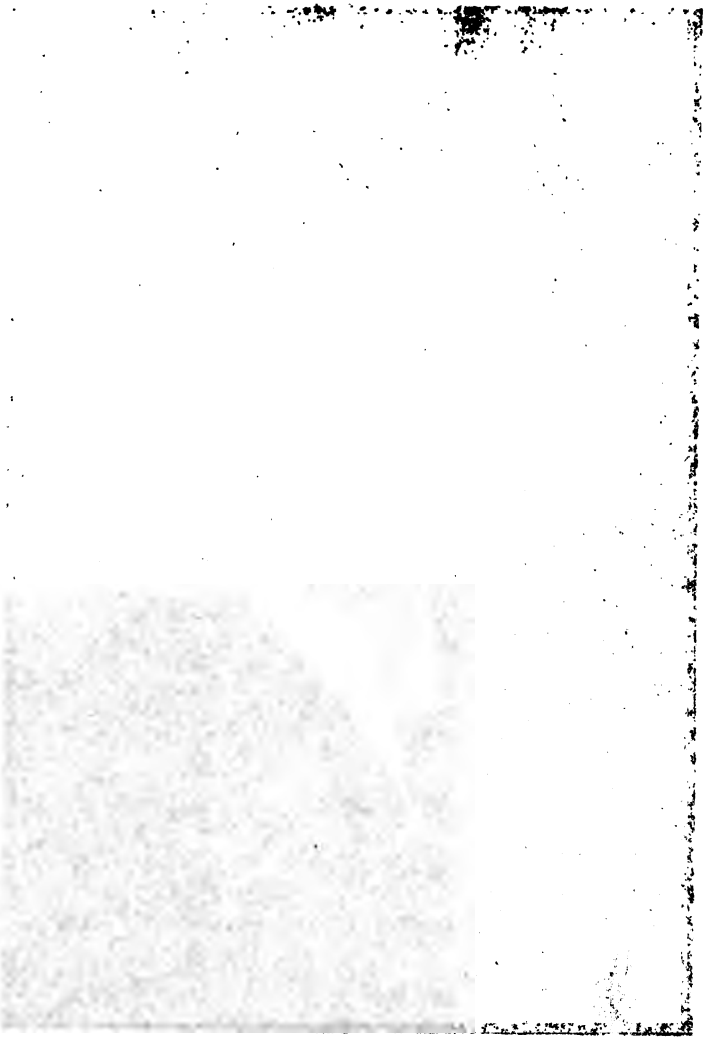


PROCEEDINGS

OF THE

TWENTY-SIXTH ANNUAL SESSION

OF THE

TEXAS BAR ASSOCIATION,

HELD IN THE

CITY OF BEAUMONT, JULY 2 AND 3, 1907.

FIRST DAY—MORNING SESSION.

The Twenty-sixth Annual Session of the Texas Bar Association was held in the city of Beaumont, commencing Tuesday, July 2, 1907.

President A. L. Beaty called the Association to order.

Mr. F. D. Minor, of Beaumont, then addressed the Association as follows:

Mr. President and Gentlemen of the Texas Bar Association:

At Texarkana, last year, the Bar Associations of Texas and Louisiana were invited to meet, in joint session, at Beaumont. The bar and the people of Beaumont looked forward with great satisfaction to the pleasure of entertaining on this occasion the lawyers of two great States. A previous engagement kept our brethren of Louisiana from meeting. We regret their absence, but rejoice in your presence. The welcome which would have been shared by them is now all for you—full measure and running over. Nor is it merely a conventional or formal welcome. The temperature at the equator in midsummer is not more different from the temperature at the North Pole in midwinter than is the spirit with

which we welcome you different from the spirit of Mrs. O'Shaughnessy's inquiry as to the husband and her friend: "Good morning, Mrs. O'Flanigan. How is Mr. O'Flanigan this morning, not that I care a damn, but just to be making conversation."

The meeting at Texarkana was a joint assembly of the lawyers of Texas and Arkansas, not a meeting, distinctively, of the Texas Bar Association. Nor was it held exclusively on the soil of Texas. It was an interstate meeting. Therefore, this meeting, now begun, may be counted as the first held by the Texas Bar Association in East Texas. It would be tedious, and it is needless, to recite all the reasons that make Beaumont a peculiarly fit place of assembly for any association in Texas. But I can not forbear reminding you that, from the beginning, East Texas and the Neches river have been no mean landmarks in the history of this State.

The historian tells us that the knightly La Salle made the first improvement on Texas soil, met first the rude shock of Indian warfare, built the first fort, brought to the country the first domestic cattle, and died whilst engaged, with unwearied courage, in making the first exploration of Texas.

He met his death on the banks of the Neches river, and there, in some unmarked and unknown grave, he lies buried.

History also tells that when Texas, as we know it, was without a boundary and without a name, the seat of government of an Indian tribe, called the Nassonites, was on the east bank of the Neches river at what was called the Bradshaw place, in the present county of Cherokee, where three large mounds remain as evidence of their labors.

That place was called "Texas," and, it is said, gave name to our imperial commonwealth.

Not only does East Texas hold the remains of La Salle, not only did it baptize our great State with its immortal name, but, under every government, the sons of East Texas have crowded the pages of history with the story of their achievements. In proof do I need to name more than Sam Houston, Thos. J. Rusk, J. Pinckney Henderson, John H. Reagan, David B. Culberson, L. T. Wigfall, O. M. Roberts, R. T. Wheeler, Geo. F. Moore, Richard S.

Walker, Sam A. Wilson, M. H. Bonner, R. B. Hubbard, James S. Hogg, and Frank B. Sexton. If some layman objects that the list embraces only lawyers, I answer the history of a free people can not be made, nor can be it told, if the lawyers be excluded from the one or omitted from the other.

Gentlemen of the Texas Bar Association, whether I have succeeded or not in convincing you of the historic fitness of this locality as your meeting place, there are many reasons, springing directly from the history of your profession, that make you welcome guests. Let a few suffice.

1. From the earliest period of recorded history the lawyer has been the steadfast foe of that destructive spirit which is the vital breath of anarchy and socialism. Nor have the anarchist and the socialist, of any age, failed to recognize that the destruction of the lawyer, and all his works, was an essential preliminary to the full fruition of their hopes.

In the play, Jack Cade proclaims a happy time to his followers: "There shall be in England seven half-penny loaves sold for a penny; the three-hoop'd pot shall have ten hoops; and I will make it felony to drink small beer. All the realm shall be in common, and in Cheapside shall my palfrey go to grass. And when I am king there shall be no money; all shall eat and drink on my score and I will apparel them all in one livery that they may agree like brothers and worship me their lord."

Dick, the butcher, instantly exclaims: "The first thing we do let's kill all the lawyers."

Cade at once agrees: "Nay, that I mean to do. Is it not a lamentable thing, that of the skin of an innocent lamb should be made parchment, that parchment, being scribbled o'er, should undo a man?"

2. The lawyer has ever been the opponent of arbitrary and absolute power, always an object of wrath to him seeking such power. We love him for the enemies he has made.

James I, whose royal will had been thwarted by the lawyers in Parliament when he sought to override the established laws of the land, issued a proclamation warning his subjects not to return to

Parliament "curious and wrangling lawyers who may seek reputation by stirring needless questions."

3. In every free country, the lawyers have ever been the conservative and intelligent element in the making of laws; without them legislation seldom fails to be marked by recklessness and ignorance.

In the reign of Heny IV, the Lord Chancellor, in framing the writ of summons for the election of a new Parliament, illegally inserted a prohibition "that no apprentice or other man of the law should be elected." As a result, that Parliament was noted for its recklessness, and history has branded it with the name of "*indoctum parliamentum*" or "the lack learning Parliament," and Lord Coke says "there never was a good law made thereat"; adding that as the exclusion of lawyers was against law, lawyers ever since (for the great and good service of the commonwealth) have been eligible.

4. If it be true, as a great judge has said, that the administration of justice is the principal part of all government and that the people know and judge of it by little else, who can measure the important functions of the lawyer? Who can set a limit to his usefulness in a free community? Who would deny that a government without the lawyer would be like an altar without the priest?

Gentlemen of the Texas Bar Association, these are but a few of the reasons which impel the bar of this county and the people of this city to welcome you.

May the discussions of the business sessions leave no heartburnings and the exercises of the banquet hall no headaches!

PRESIDENT BEATY: Gentlemen of the Association, I take pleasure in presenting to you Mr. Lee Estes, of Texarkana, who has been requested to reply on your behalf to the address of welcome to which you have just listened.

Mr. Estes spoke as follows:

Mr. President, Gentlemen of the Beaumont Bar:

It is a formal and very perfunctory duty that rests upon me in the name of this Association to make acknowledgment of the

kind and generous expressions of welcome that we have just heard. We thought when we came here that the gates would be ajar, but we hardly anticipated that wealth of cordiality which we have received from the very moment that we came. We have heard that it would be warm down here, but the warmest thing that we have struck has been the warmth in your greetings and in your cordiality and hospitality.

We regret that circumstances have prevented our Louisiana brethren from meeting with us, but when we consider the manner in which you have treated us thus far, we feel a great deal like Mrs. O'Shaughnessy, "We don't give a damn, we are getting plenty of it."

It is a very great pleasure to meet in a city surrounded by such historic associations as our friend has portrayed, and coming as I do, my friends, from a sister city, where the Bar Associations of the two States met just one year ago, I am prepared to say that if your experience is similar to ours, the coming of these lawyers among you will not be without good results. Among other things, we of Texarkana feel that, to a large extent, we owe to those who were our guests last July the establishment in our lines of another Court of Civil Appeals. We feel that the fellowship, the companionship, and the association of the intelligent and cultivated body of men who came among us attributed in no small degree to the happiness and the glory and the development of our people.

It is a great pleasure to meet here with the people of Beaumont, and we assure you that we receive your hospitality, your kindness and your generosity with those feelings of gratitude and sincere appreciation which will enable us, after we have gone, to recall you and your city with lasting and abiding affection.

Our friend has spoken well when he stated that to the lawyers of the land must be attributed no small part of that which goes to make up what is good and great and glorious in our country's history. There has never been a time when civil liberty was threatened, when property rights were disturbed, when religious privileges were involved, that the lawyers of the land have failed to

come to the rescue, and they have stamped their names and their work upon every country in which they have lived. It is well for them to meet in these times when there is so much of what is good in the future dependent upon the conduct and the efforts of the men of today. In the future, as in the past, my friends, the solution of all great issues and the determination of all great problems must rest upon the conscience and come from the brain of the lawyers of the land.

I want to thank you again and assure you that those who are your guests highly appreciate your expressions of welcome and your hospitality.

PRESIDENT BEATY: We will now hear the report of the Board of Directors.

MR. SANER, of Dallas: On behalf of the Board of Directors, I desire to present the following report:

BEAUMONT, TEXAS, July 2, 1907.

To the Hon. A. L. Beaty, President Texas Bar Association:

The Board of Directors of the Texas Bar Association respectfully submit the following report:

We recommend that the present meeting of the Association remain in session for two days, and thereafter until the business before the Association is disposed of, and that the following program for the session be adopted:

FIRST DAY—TUESDAY, JULY 2, 1907, 10 A. M.

Address of Welcome by the President of the Jefferson County Bar Association, Mr. F. D. Minor, of Beaumont.

Response by representative of the Texas Bar Association, to be designated by its Board of Directors.

Report of Board of Directors.

Nomination and election of members.

Address of the President, Mr. A. L. Beaty, of Sherman.

Report of the Secretary, Mr. L. Q. C. Lamar, of Dallas.

Report of the Treasurer, Mr. W. D. Williams, of Fort Worth.

Paper—"Should the Legal Status of the Negro Be Changed," Mr. Edgar Watkins, of Houston.

Report of Committee on Jurisprudence and Law Reform, Mr. George Thompson, of Fort Worth, Chairman.

Paper—"The Liability of Trusts for Private Wrongs," Mr. W. M. Holland, of Dallas.

Report of Committee on Judicial Administration and Remedial Procedure, Mr. A. P. Dehoney, of Paris, Chairman.

Paper—"Legal Ethics," Mr. Charles Harris, of Houston.

Report of Committee on Legal Education and Admission to the Bar, Mr. C. H. Miller, of Austin, Chairman.

Paper—"Uniform Legislation," Mr. Robert A. John, of Beaumont.

TUESDAY, 5:50 P. M.

Street car ride over the city of Beaumont.

TUESDAY, 9 P. M.

Smoker and music at the Elks' Club Rooms. Every one can attend with impunity; none will be required to talk; all can that desire to.

WEDNESDAY, JULY 3, 1907, 10 A. M.

Annual Address, Mr. Yancey Lewis, of Dallas.

Paper—"Needed Reforms in Our Probate System," Mr. John T. Wheeler, of Galveston.

Report of Committee on Commercial Law, Mr. Charles F. Hume, Jr., of Houston, Chairman.

Paper—"The Honor of the Bar," Mr. Thomas H. Franklin, of San Antonio.

Report of Committee on Criminal Law and Criminal Procedure, Mr. C. T. Freeman, of Sherman, Chairman.

Report of Delegates to American Bar Association.

Report of Committee on Deceased Members, Mr. Yancey Lewis, of Dallas, Chairman.

Report of Committee on Grievances and Discipline, Mr. John Walker, of Galveston, Chairman.

Election of Officers.

Election of Directors.

Election of Delegates to American Bar Association.

Selection of place of next meeting.

Miscellaneous and unfinished business.

WEDNESDAY, 9:30 P. M.—NEW CROSBY HOTEL.

Banquet to members of Texas Bar Association, guests of the Jefferson County Bar Association.

PRESIDENT BEATY: I think under the Constitution and By-Laws of the Association the report will be deemed adopted unless

there is some objection to it. I shall not put the question unless I hear objection.

(The report of the Board of Directors was received and adopted.)

PRESIDENT BEATY: The first order of business according to the report is the nomination and election of new members. Are there any nominations?

MR. SANER: The Board of Directors have not had an opportunity to go over the list yet.

PRESIDENT BEATY: The report of the Board of Directors will be passed for the present—I mean on the nomination and election of members.

I desire to state that the desk here is supplied with programs, and they will be passed around. If you fail to get one when they are passed around, you can call here and get one.

The next item on the order of business, I believe, is the Annual Address of the President, which I shall read.

[The President's Annual Address, which was thereupon delivered by Mr. Beaty, will be found in the Appendix to these proceedings.]

MR. SANER: I will now read the report of the Board of Directors on the nomination of members.

The report was as follows:

BEAUMONT, TEXAS, July 2, 1907.

To the President of the Texas Bar Association:

The Board of Directors beg leave to report the following additional list of attorneys who have applied for admission to membership in this Association, and the Board of Directors having fully considered the applications and found the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in this Association:

A. L. Calhoun, Beaumont, Texas; S. B. M. Long, Paris, Texas; E. L. Bruce, Orange, Texas; H. M. Whitaker, Beaumont, Texas; Otto Taub, Houston, Texas; L. H. Mathis, Wichita Falls, Texas; John L. Garrison, Nacogdoches, Texas; D. W. Glasscock, Beaumont, Texas; James A. Harrison, Beaumont, Texas; George W. Graves, Houston, Texas; R. A. Hefner,

Beaumont, Texas; John C. Little, Kountze, Texas; I. Lovingberg, Jr., Galveston, Texas; W. H. Nall, Kountze, Texas; S. B. Cooper, Beaumont, Texas.

Respectfully submitted,

R. E. L. SANER,
WM. H. BURGESS,
W. L. ESTES,
Board of Directors.

A motion that the report of the Directors be received and the Secretary be directed to cast the unanimous ballot of the Association in favor of the election of the members named therein was adopted, which being done, it was announced that the applicants had been duly elected to membership.

PRESIDENT BEATY: The next in the order of business is the report of the Secretary, Mr. L. Q. C. Lamar, of Dallas.

REPORT OF SECRETARY.

BEAUMONT, TEXAS, July 2, 1907.

To the President and the Board of Directors of the Texas Bar Association:

Your Secretary respectfully submits the following report of his transactions on behalf of the Bar Association from July 12, 1906, upon which date the present Secretary was inaugurated, until June 30, 1907. He also shows herewith matter in connection with the administration of the last meeting of this Association, at Texarkana, Texas, on behalf of the former Secretary, but not included in this, his individual report, but as is considered necessary to be shown in the aforesaid connection. This supplement, however, marked "Exhibit A," is self-explanatory, as covering incidental expenses not shown in the report for last year, in the amount of $132.72.

With the above explanation, your Secretary has collected and charges himself with the following sums:

Initiation fees	$ 5 00
Annual dues for the year 1899	2 50
Annual dues for the year 1900	2 50
Annual dues for the year 1901	2 50
Annual dues for the year 1902	2 50
Annual dues for the year 1903	15 00
Annual dues for the year 1904	35 00
Annual dues for the year 1905	90 00
Annual dues for the year 1906	237 50
Annual dues for the year 1907	482 50
Total dues collected	$ 875 00

To sale of Proceedings	23 25
To cash from Arkansas Bar Association (proportionate share cost publication Proceedings 1906)	203 65
To cash from former Secretary, this Association	412 28
To bank exchange (included in members' checks)	2 40
Grand total	$1,516 58

Against which your Secretary asks credit as follows:

Paid Treasurer, as per his receipt	1,516 58
Grand total	$1,516 58

In connection herewith, your Secretary submits his accounts showing the standing of all members of this Association with regard to the payment of dues up to June 30, 1907, as well as all receipt stubs, bank and check books, expense bills, etc., all of which has been passed upon by the Board of Directors and their finding noted hereon.

Your Secretary further begs to report that there has been such a demand for copies of the Proceedings of 1906 (Texarkana meeting) that he has been compelled to deny a great number whom it would have been a pleasure to supply, but for the limited number of copies remaining on hand after distribution to the regular members and exchanges. As numerous requests have been received from Bar Associations and Libraries to be placed on the "regular mailing list," your Secretary would recommend that a sufficient number of copies be hereafter published to meet this increased demand.

Respectfully submitted,

L. Q. C. LAMAR,
Secretary.

Examined and found correct.

R. E. L. SANER,
WM. H. BURGESS,
W. L. ESTES,
For the Board of Directors.

PRESIDENT BEATY: The next in order is the report of the Treasurer.

REPORT OF TREASURER.

BEAUMONT, TEXAS, July 2, 1907.

To the President and Board of Directors of the Texas Bar Association:

Your Treasurer begs to make the following report of the financial affairs and expenditures of the Association since your last meeting and the making of his last report:

To balance on hand as shown by report of 1906	$ 808 10
Paid in by former Secretary since making said report	132 72
Paid in by the present Secretary	1,516 58
Total	$2,457 40

Against which he asks credit for the following expenditures on behalf of the Association:

Incidental expenses of the Texarkana meeting	$ 132 72
To Von Boeckmann-Jones Co. for printed notices furnished former Secretary	9 75
To W. M. Warlick for stationery for present Secretary for use of Association	10 50
To Dorsey Printing Co. for letter books, files, etc., for present Secretary	3 30
To salary present Secretary to July 12, 1907	120 00
To stamps, for use of Association	33 00
To Misses Carter, Secretary's notices to members	5 75
To freight, drayage and express on Proceedings 1906, from publishers at Austin to Secretary at Dallas	10 16
To Wells-Fargo Express Co., distribution of Proceedings 1906	58 46
To Hargreaves Printing Co., shipping envelopes	13 25
To Von Boeckmann-Jones Co., publishing Proceedings 1906	536 38
To W. M. Warlick, stationery for present Secretary	1 75
Total	$ 935 02
Balance cash on hand 1907	714 28
Total receipts 1907, since report 1906	$1,649 30
Brought forward from 1906	808 10
Total	$2,457 40

SUMMARY, SHOWING AMOUNT IN TREASURY.

Balance on hand for 1907	$ 714 28
Brought forward from former report	808 10
Amount in Treasury at date of this report	$1,522 38

All of which is respectfully submitted.

WILLIAM D. WILLIAMS,
Treasurer.

This report and the accompanying vouchers, receipts, drafts, etc., examined and found correct.

R. E. L. SANER,
WM. H. BURGESS,
W. L. ESTES,
For the Board of Directors.

BEAUMONT, TEXAS, July 2, 1907.

Hon. A. L. Beaty, President of the Texas Bar Association.

DEAR SIR: The Board of Directors beg to report that they have examined the accounts of the Secretary and Treasurer and find the same correct.

R. E. L. SANER,
Chairman.

Mr. Leon Sonfield, of Beaumont, then addressed the Association as follows:

Mr. President and Gentlemen of the Association:

I am requested to make one announcement which really was made in the card accompanying the program. We are meeting here in the lodge room of the Elks, and I want to state to you that not only the lodge room, but the club rooms, and that for which the lawyers have little use, the card and billiard rooms, are placed at the disposal of the Bar Association. (Applause.) You are welcome to any part of the building. There is a reading room, ladies' parlor, club room, where you can play a little game of pitch, nothing stronger. We have here on the desk the Elks' visiting cards, which we would be glad to fill out and hand to you, but I tell you candidly you hardly need them, because they can see "lawyer" written upon your countenance.

PRESIDENT BEATY: You have heard the announcement of Mr. Sonfield, and I am sure that you all appreciate the hospitality and kindness.

It is moved that we stand adjourned until 2 o'clock.

The Association then adjourned until 2 o'clock p. m.

FIRST DAY—AFTERNOON SESSION.

The meeting was called to order by President A. L. Beaty.

PRESIDENT BEATY: The next on the program is a paper by Mr. Edgar Watkins, of Houston, "Should the Legal Status of the Negro Be Changed?"

[The paper, then read by Mr. Watkins, will be found in the Appendix.]

PRESIDENT BEATY: I find here some resolutions that have been proposed that may be considered at this time if there is no objection.

BEAUMONT, TEXAS, July 2, 1907.

To the President and Members of the Texas Bar Association:

We, the undersigned, members of the Texas Bar Association, do hereby propose an amendment to Article 8, Section 1, of the Constitution of the Texas Bar Association, as follows:

To amend Article 8, Section 1, of the Constitution, which reads: "A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting," so that the same shall read as follows: "The time and place for holding the annual meeting shall be determined by the Board of Directors and announcement thereof made to the Association sixty (60) days in advance of the date of such meeting."

Respectfully submitted,

WILLIAM D. WILLIAMS,
W. L. ESTES,
R. E. L. SANER,
WM. H. BURGESS,
JOHN L. DYER,
A. L. BEATY.

It was moved that the resolution be amended so as to read as follows:

"That the time and place for holding the annual meeting shall be selected by the Association, and if the Association does not select the place, then that the place of meeting be determined by the Board of Directors and announcement thereof made to the Association sixty (60) days in advance of the date of such meeting."

PRESIDENT BEATY: Gentlemen, you have heard the amendment. Those in favor of the resolution as amended say "aye"; opposed "no." The "ayes" carried.

PRESIDENT BEATY: The resolution is adopted as amended.

The Secretary then read the following resolution:

To the President and Members of the Texas Bar Association:

We, the undersigned, members of the Texas Bar Association, do hereby propose an amendment to the By-Laws of the Texas Bar Association, as follows:

To amend Section 2, Article 4, of the By-Laws of the Texas Bar Association, providing as follows: "Sec. 2. The annual dues shall be payable at the annual meeting, in advance, and should any member neglect to pay them for one year at or before the next annual meeting, he shall cease to be a member," etc., so as to make the same read as follows: "Sec. 2. The annual dues shall be payable upon call of the Secretary therefor between January 1st and the date of the annual meeting for that year, and should any member neglect to pay them for one year from the date of such annual meeting, he shall cease to be a member; subject to reinstatement, however, upon application to the Association and with the endorsed approval of the Board of Directors, and the payment to the Secretary of all dues then in arrears, together with dues for the current year."

Respectfully submitted,

WILLIAM D. WILLIAMS,
WM. H. BURGESS,
W. L. ESTES,
R. E. L. SANER,
JOHN L. DYER,
A. L. BEATY.

PRESIDENT BEATY: The adoption of that resolution has been moved. Are there any remarks? Those in favor of the adoption of the resolution say "aye"; opposed "no." The "ayes" carried.

PRESIDENT BEATY: It is adopted.

PRESIDENT BEATY: The next in order of business is the report of the Committee on Jurisprudence and Law Reform, of which Mr. George Thompson, of Fort Worth, is Chairman. I understand Mr. Thompson is absent. Will the next member on the committee make the report?

MR. YOUNG: Mr. President and Gentlemen of the Convention: The committee will have to beg your pardon for the length of this report. They do not concur in everything and have decided to submit everything and let the convention do as they please with it.

Mr. Young, from the committee, presented the following report:

BEAUMONT, TEXAS, July 2, 1907.

To Hon. A. L. Beaty, President of the Texas Bar Association:

Your Committee on Jurisprudence and Law Reform beg to report:

Believing that we have the best system of jurisprudence of any State or country, we find but few changes to recommend.

Our present system has been wrought out by long experience and many years of trial. During these years of formation we have passed through revolutions, wars, reconstruction, peace and changes of governments; and during these times our present system has stood the test and has proven efficient and safe through all of these changing periods and conditions; and it is believed to be better than some theoretical and untried systems.

However, there are some changes and amendments that are necessary to meet the increasing business and litigation consequent upon our developing and growing commercial, agricultural, manufacturing and transportation enterprises; and to insure to every person, great or small, the sure protection of the law, and that their legal controversies shall be considered by the highest courts of the State and on a fair record. Among these changes and amendments, we would suggest and recommend the following:

1. That, in addition to the right of appeal to the Supreme Court by writs of error, and by having that court answer legal questions certified to it by the Courts of Civil Appeals, the right of appeal be given to the Supreme Court by writs of certiorari from that court to the Courts of Civil Appeals in cases not within the jurisdiction of the Supreme Court by writs of error; and modeled on the plan of granting writs of certiorari by the United States Supreme Court to the United States Circuit Courts of Appeals.

That writ has proven very efficient and highly beneficial in the Federal practice; and in many instances the writ has been granted when the Circuit Courts of Appeals have refused to certify the questions at issue to the Supreme Court.

A bill was introduced in the last Legislature to limit the class of questions to be certified to our Supreme Court to only important and controlling law questions involved in the case under investigation. This bill failed of passage, and it is to be presumed that the Legislature con-

cluded that the Courts of Appeals should have the aid of the Supreme Court in deciding all classes of legal questions.

Likewise a bill was introduced into that Legislature to limit the jurisdiction of the Supreme Court, in granting writs of error, to amounts involved of not less than $3000; and that bill also failed of passage. It is, therefore, evident that it is not the desire of the people to further limit and cut down the jurisdiction of that court.

In these times of great enterprises, there is a tendency with many to want to limit the jurisdiction of the highest appellate courts to litigation in which large amounts are involved. This, we think, is wrong and is out of accord with the policy of our system of government. Wealthy litigants can often better stand the results of uncorrected errors than the poorer with their smaller amounts. Litigation, in which small amounts are involved, is almost always between persons of small means or of only reasonable means; and the trial courts for such cases are more often than not inefficient and incapable; and the Courts of Civil Appeals, owing possibly to the number of such cases and the volume of their business, do not give the deliberate consideration to such cases as to those involving larger amounts. It is very frequent that in these smaller cases that as novel, intricate and difficult legal questions and issues arise as in larger cases; and it is quite often that the Courts of Civil Appeals will refuse to certify such law questions to the Supreme Court, although their opinion may not cover all of the legal issues raised and may be in conflict with principles of law announced by other courts in similar or analogous cases. Thus erroneous and conflicting doctrines may, and often do, go uncorrected till the same question is raised in a case of which the Supreme Court has jurisdiction.

Therefore, it is believed that, if the Supreme Court should be given authority and discretion to grant writs of certiorari to the Courts of Civil Appeals in cases involving amounts below the present jurisdiction of the Supreme Court, this wrong will be righted and thereby the small litigant, the people of limited means, will be placed on an equal footing with the larger litigants, and can have their errors duly considered and corrected in due time and by the highest courts of the State, and we recommend that this authority to grant writs of certiorari be given our Supreme Court by proper enactment at the next meeting of our Legislature.

2. The business of our Supreme Court has increased beyond the expectancy of the people of this State when they adopted the present amendment to the Constitution limiting the membership of that court to three members. It is claimed for that court that it reads and considers the record and briefs in every case in which there is an application for a writ of error; and nothing short of this would meet the intention of the law establishing and governing that court. This arduous labor in

connection with the cases considered and decided by that court, it appears to us, is already beyond the capacity of three members; and with the rapid growth of this State in population and every line of business, and the corresponding increase of litigation, added to the present heavy duties, will soon increase the business far beyond the capacity of a court of three members.

The same or worse conditions exist and prevail in the Court of Criminal Appeals. Its docket is already too heavy for its capacity, and has been for several years, and to such an extent that many cases necessarily have to be lightly and partially considered. The business of that court will likewise increase as that of the Supreme Court, and will be far beyond the capacity of three members.

The judiciary is the most important branch of our system of government, and these two courts, being our highest and most important courts, should be continuously kept of sufficient size in membership that every case coming before them would, in a reasonable time, receive due and deliberate consideration.

The necessity for an increase of the membership of those two courts may not be so eminent at this time; but by the time that an amendment to the Constitution can be submitted, adopted and put into force, which will require about three or four years, the necessity will be very great.

It is, therefore, recommended that our Constitution be so amended as to authorize the membership of the Supreme Court and of the Court of Criminal Appeals to be increased from three to five and more as necessity may require; and that the salaries of the judges of those courts be increased from $4000 to $7500.

3. There is a growing sentiment, shared by possibly a majority of the public and the press and by many in the legal profession, that the, so-called, technicalities in our procedure should be abolished and wiped out, and that the procedure and rules of the courts be changed and simplified so that there will not be so many reversals and miscarriages of justice.

Our present Governor recommended to the special session of the last Legislature a number of reforms for our judiciary. His ideas of such reforms had previously been embodied in the platform on which he was elected. In response to the Governor's recommendations, a number of bills were introduced into that and the regular session of the Legislature; and among the changes sought to be made by these bills are the following: To permit five jurors in the county court and nine in the district court to render a verdict; to require the court's charge to be prepared and submitted to the jury before the argument begins; to require all exceptions to the court's charge to be made before the retirement of the jury; to direct the appellate courts not to reverse a cause where the trial

court had charged on the weight of the evidence, unless it was clear that the jury had been misled thereby; to authorize the trial judge to sum up the evidence in his charge as in Federal procedure; to require the appellate courts to decide cases only on the theory advanced in the trial courts; and to direct that the appellate courts affirm causes, even if errors had been committed on the trial below, if substantial justice had been done and a fair result had been reached. All or about all of these measures were defeated, and we think properly so.

Some of these changes were recommended to this body by the preceding Committee on Jurisprudence and Law Reform at the Texarkana meeting, and some were adopted and some were not.

The reasons most usually assigned for these changes are: That they will simplify and make easy and practicable our procedure; will prevent miscarriages of justice; will prevent so very many reversals; and will prevent reversals on theories other than those brought out in the trial courts.

But it is believed by your committee that these changes or any number of them would, instead of accomplishing the results desired for them, bring confusion and work greater injustice and wrong than our present rules. In fact, our procedure, as prescribed by our statutes and the rules adopted by our Supreme Court, is simple, plain, straightforward and easy to follow; and we believe that the fault or wrong, if any, lies elsewhere than in our procedure. And we believe that the evils, sought to be remedied by these changes and amendments, are the results of the want of proper care and a close adherance to the rules of law and procedure in the trial courts. It is more frequent than not that trial judges, whether capable or not, are not careful enough to guard against errors, and to correct such errors while in that jurisdiction. It is often that when the trial judge's attention is called to some grave error, or has acted in violation of some article of the statute, or has not followed some prescribed rule, that he will remark that the higher courts are made to correct errors, that's their business, and let them correct the errors, if there are any. Again, it is many times the case that in order to hurry through with a trial and dispatch much business, the trial courts will hurry along in an indifferent and careless manner, and when errors are called to their attention, either at the time or on motions for new trials, they will "pass them up" with the statement often that the case will be appealed anyhow, and let the higher courts pass on the errors. These instances but indicate the feeling and conduct of many trial judges. This is not the case with near all of the trial courts, but it is the case with far too many of them, and sometimes it occurs from indifference and carelessness, and quite often from absolute inability and inefficiency. Thus the higher courts are filled with cases on appeal, and they will

continue to be filled as long as litigants feel and find that their rights have been outraged and the trial a mockery; and so long as trial courts are not rigidly careful in the trial of causes according to right and justice, the appellate courts will be filled with cases and a large per cent of them will continue to be reversed as now. Courts, of all other bodies and tribunals, should have strict rules to govern them in passing on the personal and property rights of the people; and being tribunals for the enforcement of the law, they should follow the law; and when this is rigidly done, litigants usually feel that their rights have been protected and accept the results. But when they find that the court has outraged them even more than the opposing party, possibly, they begin to cast about to find another court to redress their grievances. But to sweep away the barriers, as some of the above-named measures would do, of protection that long experience and usage have demonstrated to be best and surest means of administering justice and insuring a fair trial, would be to give greater latitude to wanton and unbridled methods and leave outraged litigants scarcely any protection whatever. More capable and efficient trial judges and a closer adherence to the rules of our present procedure will correct the evils of the great volume of appealed cases and the numerous reversals on seeming technicalities.

The cause for many of the changes of theories in the appellate courts from that of the trial courts is largely due to to the manner in which the record is made up. More than two-thirds of the courts of this State have no official stenographers, and can not well afford them; and the statements of facts and bills of exceptions have to be made up in the old way by agreement or by the court; and most of the trial judges seem to have a dread and horror for making up a statement of facts; and when there is a disagreement between the attorneys, he will usually adopt that made up by the attorneys on the winning side, as that will more likely sustain his rulings and save him from a reversal; and if he adopts that of the other side, and he makes any changes, they will be in line with his rulings and to prevent a reversal. Oftener than any other, when attorneys agree to a statement of facts, it is to keep the court from adopting one or the other of the statements and thereby get a worse one than to agree on one; and in doing this, it is frequent that concessions are made to get an agreement; and thereby facts that were not put in evidence will be inserted, and many facts that were put in evidence will have to be left out in order to get the agreement. In a number of cases, when there was no agreement, the judge has detached the statement of the plaintiff's evidence as made out by his attorney, and detached the defendant's evidence as written out by his attorney, and put these two parts together and approved it as the statement of the facts. Thus, in such cases and many others as bad or worse, there

is a different state of facts in the appellate courts to that in the trial courts; and in many such cases some theory or error assigned in the lower court is wiped out entirely before the case reaches the appellate court, and other theories and errors must be sought. A true record of the cases for the appellate courts will remove most of the evil of a change of theories in those courts.

We believe that the foregoing evils can be corrected and eradicated by making it a cause for removal from office of both county and district judges for inefficiency where they violate and run counter to the prescribed rules of procedure and do not correct their errors in their own court; and by making it a penal offense for a trial judge to certify to an incorrect statement of facts or bill of exceptions, but he should be empowered with authority to compel the attorneys on each side to assist him in making out a statement of facts, when they do not agree, other than by furnishing him with their respective statement of facts.

4. We further recommend that the law of landlord and tenant be so amended as to give the landlord the same protection as is given written lien holders, by making it a felony to fraudulently dispose of crop products without discharging the landlord's lien by paying the rents and advances.

It is a well-known fact that a large number of farm tenants run off, dispose of and consume their crops to an extent that there is not enough left to pay the rents and advances, and this can be easily done and before the landlord can learn of it in time to destrain the crops; and he should have the same protection of the criminal law for his lien as the written lien holder.

5. In many sections of the State the chief dependence for farm labor and common labor is the negro; and that race is so unreliable and its contracts of so little force, that we believe it should be made a misdemeanor for any one to induce the employes and tenants of another, under a contract, to leave such person before the expiration of such contract, and to make the person enticing such laborers and tenants away liable for their debts and for damages resulting from such laborers and tenants so leaving. And where such laborers or other employes have been employed and are discharged without sufficient cause before the contract expires, to make the wages or salary immediately due for the whole time and effective under the laborer's lien as now provided.

6. We recommend that the law of accepting pleas of guilty, in both misdemeanor and felony cases, be so amended that such plea shall be taken as absolutely establishing the guilt of the defendant, and that evidence shall be introduced and the case fully developed as to the grade of the crime, and the penalty assessed accordingly; and in no case shall the smallest penalty be assessed.

I favor all of the foregoing. J. L. YOUNG.

I agree with the recommendations offered by the Acting Chairman of the Committee, except in paragraph three thereof, to which I do not agree. I favor renewing the recommendations made by several committees in favor of nine jurors bringing in a verdict in civil cases. I am also in favor of methods by which practice in both civil and criminal cases may be simplified. The several measures recommended by Governor Campbell met my approval. The reports of former committees will show the argument on the jury verdict. The messages of Governor Campbell contain good matter as to his recommendations.

I believe it would also be a good idea if the State were allowed to appeal in criminal cases, especially where the question involves the validity of a statute.

I think the law should also be amended so that where a defendant in a criminal case is convicted of manslaughter, for illustration, and afterwards obtains a new trial, that he may thereafter be convicted for any crime authorized by the evidence and that the conviction of manslaughter shall not be, when a new trial is granted, considered as an acquittal of higher offenses.

EDGAR WATKINS.

I concur with Mr. Watkins.

CROOK.

We suggest that Article 1472, Revised Statutes of Texas, relating to receiver, be amended so as to read as follows:

Article 1472. All moneys that come into the hands of a receiver, as such receiver, shall be applied as follows:

1. To the payment of all costs of the suit.
2. To the payment of all wages of employes due by the receiver.
3. To the payment of all debts due by the receiver for materials and supplies purchased during the receivership by the receiver for the improvement of property in his hands as receiver.
4. To the payment of all debts due for betterments and improvements done during the receivership to the property in his hands as receiver.
5. To the payment of all claims and accounts against the receiver in contracts made by the receiver during the receivership, and for all claims for stock and personal injury claims against said receiver during such receivership, and all judgments rendered against said receiver, personal injuries and stock killed.
6. To the payment of all prior liens against the property in the hands of the receiver in the order of their priority before the appointment of the receiver.
7. To the payment of all judgments against the person or persons or corporation in suits brought before the appointment of the receiver.

Article 1465a. 1. Immediately upon qualification for, and before in-

curring any expense to the estate other than for the preservation thereof, the receiver shall, with the assistance of two disinterested appraisers appointed by the court, make a sworn itemized inventory and appraisement of all property coming into his hands as receiver, the estimated value of same under judicial sale, together with the estimated expenditure, if any, necessary to preserve the property, as well as the probable time necessary to perfect an advantageous sale of the receivership assets. Upon the filing of such inventory and appraisement and estimate, the receiver shall publish in some daily paper, if any, published in the county where the assets or the principal portion thereof are located, and in case there is no newspaper published in the county, then in the nearest county or an adjoining county in which there is a daily or weekly paper, for one week thereafter, a notice to the effect that on the seventh day after the publication of the first notice, in the court having jurisdiction, hearing will be had on the inventory and appraisement, and that all parties having a provable interest in the receivership assets may be heard as to the disposition of the said receivership and the property thereof. Unless it appears clearly to the court upon such hearing that the value of the receivership estate can be enhanced by the recommended and estimated expenditure, if any, or by the continuance of the receivership without sale of the property, then the court shall order the sale of the assets of the estate, the sale to take place on next regular judicial sales day, unless it appear to the court that an earlier sale can be of advantage to the estate, but in no case shall the sale be sooner than ten days from the granting of the sale order and after publication for one time in some daily or weekly paper in the county or nearest adjoining county having a paper, of the order of sale. Provided, however, that perishable property clearly defined and in imminent danger of loss or serious deterioration may be sold under order of the court without restriction as to time or place.

2. The compensation of the receivers shall not exceed 6 per cent on the first $500 or less, 4 per cent on moneys in excess of $500 and less than $1500, 2 per cent on moneys in excess of $1500 and less than $10,000, and 1 per cent on moneys in excess of $10,000.

3. Any mortgagee or lien holder prior to the appointment of the receiver may make application setting forth his lien, and shall be entitled to a hearing thereon in term time or vacation after service of three days' notice of the application upon the receiver. Where it appears to the court that the lien is valid and subsisting at the time of the appointment of the receiver, he shall order the property on which the lien exists delivered to the lien holder, if same is worth no more or less than the balance due on said lien, free from court costs except those of the lien holder. Where it appears that the lien property is worth more than the

amount due thereon, the court shall order the receiver to pay out of funds coming into his hands as such, the amount of such claim, and upon the sale of the receivership property, said lien property shall either be sold separately and proceeds of the sale segregated and applied to the payment of said lien claim, or the court may at its discretion order a separate appraisement by the receiver and two disinterested individuals especially competent for that purpose, of the lien property, and after filing the report of the appraisers, such lien property may be sold without segregation and the appraised value thereof set aside first to the payment of the lien claim.

4. Receivers shall file reports duly verified under oath in all cases at least once in every month after their qualification, and such reports shall give all changes affecting the value of the inventoried assets coming into the hands of the receiver since his last report, and additions thereto or subtractions therefrom, and specifying every item of such change, and giving an estimate of the income and the expenditure for the next succeeding month thereafter.

5. In all cases where receivers are appointed under this chapter, they shall be liable, with their bondsmen jointly and severally, in the amount of the bond, for any deterioration in the value of the estate in the hands of the receiver during the receivership, where the provisions of this section are not observed by him in the making and filing of his inventory and appraisement and his monthly reports.

6. In all cases where receivers are appointed by the courts of this State, the court shall fix the receiver's bond at not less than one-half of the inventoried value of the property coming into the hands of the receiver, and where the assets of the estate are increased in course of administration, a new bond shall be required of the receiver.

7. In all receivership cases or causes pending in this State, any person having a provable interest in the assets of the receivership may, by proper application filed in the court having jurisdiction, have process issued and served on the receiver to show cause on the tenth day thereafter, if not Sunday, otherwise on the Saturday preceding, why such receivership should not be vacated or discontinued, and the property of same sold. The court having jurisdiction shall in term time or in vacation, in pursuance of said notice of hearing, hear such application, unless there has been a similar hearing in that cause within thirty days next preceding filing of said application. On hearing, if it shall appear to the court that the property of the receivership will not be benefited by the further continuance of the receivership, the court shall thereupon enter his order for the sale thereof, as hereinbefore provided.

8. In all receivership proceedings in this State the court shall, in fixing the fees of attorneys and Master in Chancery and other parties

serving under the orders of the court in receivership cases, be governed by the value to the estate of the services so rendered, and such fees and allowances should be fixed at not more than for similar service under private employment.

9. Any party to a receivership proceeding may prosecute their appeal from any order of the trial court in such proceeding.

I believe the general purposes contained in this recommendation are along proper lines. I do not feel now that I can commit myself to all the details of the recommendations.

EDGAR WATKINS.

I concur with Mr. Watkins.

J. L. YOUNG.

Some things I concur in, some not. Fees provided are entirely too small.

DYER.

The following are among the reasons that prompt us to recommend the changes proposed in the receivership statutes of the State, namely:

Subdivision 6 of Article 1472 is added to this article and is intended to give lien holders at the time of the appointment of the receiver a preference in the payment of their claim for their judgment. The committee can see no justice in a provision that will allow a judgment which may be nine or ten years old or more a preference over a present valid and subsisting mortgage which may, perhaps, represent most if not all of the entire receivership estate.

The proposed Article 1465a is intended to throw about the appointment of the receivers and their administration, conditions which will require the receiver and the court to exercise diligence and discretion in the administration of receivership estate. It is well known that under the present method of procedure in these cases that justice miscarries and that too frequently the creditor for whose asserted benefit the proceeding is brought receives nothing. In such cases the officers of the court, including the attorneys, the master in chancery and the receivers, with the charges and allowances made by the court, absorb the entire property. The committee believes, after careful study, that a statute substantially as suggested will remedy most of these evils.

Under subdivision 1 the provisos and requirements are such, it is believed, that the great majority of cases will end in a prompt disposition of the receivership assets whereby the costs of administration will be reduced to a minimum.

The provisions here recited, however, are not such as to take from the court or the receiver the preservation of the property or the husbanding of its assets till such time as they can be disposed of to advantage. Much complaint has arisen in the profession of orders being made affecting the body of the receivership assets without a chance for hearing on the

part of those interested in the same. The provisions of this subdivision, without endangering the receivership property, gives every one having a provable interest an opportunity to be heard, and gives the court the advantage of the advice and assistance of the attorneys for interested parties.

Subdivision 2 provides that the compensation of receivers shall be the same as trustees in bankruptcy. This may seem inadequate at first, but it is certain that under the administration of the bankrupt law there has been no lack of competent persons ready and willing to act as trustees, and it is thought that the fixing of the compensation as here indicated will have a wholesome effect in discouraging long drawn out receiverships by the receiver seeing too rosy a hue for the future for the receivership profits, in administration.

Subdivision 3 is intended to give a mortgagee an opportunity of protecting his property against the costs of needless or extravagant administration, but gives ample opportunity for the receiver to take the benefit of the mortgaged property, where necessary. The fact that the present working of the statute in force subjects the mortgagee's security to all the costs of the receivership, which may and do often defeat the security altogether, makes this subdivision one calculated to lend confidence in the extending of credit and lessen the fears of confiscation through receivership proceedings.

Subdivision 4 requiring receivers to file a verified report at least once in every month after their qualification and during the continuance of the receivership, is intended to require careful consideration on the part of the receivers of all the conditions affecting the receivership and at the same time to provide for the creditors and the court the fullest knowledge and information of the affairs of the receivership, so that they may be governed accordingly. The very knowledge of the fact that a receiver must make these reports will go far towards requiring care, and an early discovery of any depreciation in the value of the assets of the estate and should cause him to recommend the discontinuance of the receivership.

Subdivision 5 is not thought to be unreasonable and is perhaps a common law liability in part, and is likewise intended to give to the service rendered by a receiver that carefulness and promptness which should go into one's private business.

Subdivision 6 is intended as much to guide the court as to protect creditors. This subdivision in providing for the amount of the bond, looks to the inventory and appraisement. Illustrations are not lacking where, through lack of information in the hands of the court and lack of requirement on the part of the statute, bonds have been fixed at amounts entirely too small and great damage has resulted before the

true condition of the estate became known to the court and creditors, so that a larger bond could be required.

Subdivision 7 gives to those interested in the assets of the receivership an adequate procedure by which they can demand the attention of the court in the investigation of the condition of receivership estates, but places about this privilege such restriction as will prevent the court being imposed upon or harassed.

Subdivision 8 is intended to indicate to the court the policy of the law in restricting the fees of attorneys and masters in chancery and other parties serving under the orders of the court in receivership cases to the actual value of such service to the estate.

Subdivision 9, which gives the right of appeal to parties interested in a receivership estate from any order of the trial court in such proceedings, are of the utmost importance in the accomplishment of justice in receivership causes. This provision is the keystone of those that precede it, and will have a most salutary effect upon the trial court in making all orders in receivership cases, knowing that the same may be passed for review before the higher court. As the law now stands, this is impossible without appealing the whole case, and as usual in receivership, the record is so bulky and the complication so numerous that no party aggrieved at an order of the court, however unjust, feels justified in going to the extreme extent and inconvenience of an appeal of the whole case to have an adjudication upon his branch of it.

We recommend that Article 2053, Revised Statutes, be amended so as to read as follows:

"Article 2053. No property upon which liens have been given by the husband to secure advancements to make crops for the current year, or property upon which liens have been given by husband and wife, acknowledged in a manner legally binding upon the wife to secure creditors, or upon which a vendor's lien exists, shall be set aside to the widow or children as exempted property, or appropriated to make up the allowances in lieu of exempted property, until the debts secured by such liens are first discharged."

The insecurity of persons making advancements, and the great injustice done them by having such advancements, often of very large amounts, confiscated to make allowances for widow's home and one year's support, works a great hardship, and is ample reason why the law should be amended. A case in mind: Party advanced about $2500 to make a rice crop, husband executed usual mortgage on crop and live stock; wife's allowance in lieu of home, and for one year's support, was about $2500, which was reasonable, and the rice harvested brought that amount, so that party making advancements readily saw that he had unwillingly contributed $2500 to the widow and orphans of decedent. Deceased had

expected to get much less advancement, but his necessities proved greater. The wife was far out in the country, and unable to leave children and household work to go to town to have acknowledgment taken. This has often been the case, and prevents liberal advancements to farmers, and retards greater activity in agricultural pursuits. Most business men know that the husband has a right to mortgage the crop and live stock, but few of them know that the death of the husband may invalidate the security.

Respectfully submitted,

J. L. YOUNG,
Acting Chairman.

MR. BURGESS: I move that the further consideration of that report be postponed until tomorrow. It is many pages in length, and I, therefore, move that it be postponed until tomorrow.

MR. MILLER: I should say we ought to postpone the consideration of that question of receivership until the next session of this Association. I think we are prepared to take up everything except receivership, and my judgment is we should consider all except receivership.

MR. BURGESS: There ought to be some opportunity for investigation before we proceed into a consideration of it, and I, therefore, move that it be postponed until tomorrow.

PRESIDENT BEATY: Gentlemen of the Association, it is moved that the consideration of the report of this committee be postponed until tomorrow after the reading of the papers. The previous question is also moved. The question now is, shall the previous question be put? Those in favor will say "aye"; opposed "no." The "ayes" carried.

PRESIDENT BEATY: Then the question to be presented is, shall we postpone the consideration of this report until tomorrow after the papers are read? Those in favor of that say "aye"; opposed "no." The "ayes" carried.

MR. SANER: Mr. President, the Board of Directors beg leave to report the following additional list of attorneys who have applied for admission to membership in this Association:

BEAUMONT, TEXAS, July 2, 1907.

Hon. A. L. Beaty, President of the Texas Bar Association:

The Board of Directors beg leave to report that the following persons have applied for admission to membership in this Association, and the Board of Directors having duly considered the applications and found the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in this Association: S. B. Cooper, Jr., Beaumont, Texas; J. I. Perkins, Rusk, Texas; John M. Conley, Beaumont, Texas; C. A. Teagle, Beaumont, Texas; John J. O'Fiel, Beaumont, Texas; Marvin Scurlock, Beaumont, Texas; J. F. Dabney, Liberty, Texas; C. K. Walter, Gonzales, Texas; Joe Williams, Port Arthur, Texas; E. A. McDowell, Beaumont, Texas; C. A. Lord, Beaumont, Texas; W. F. Kelly, Galveston, Texas; E. A. Townes, Beaumont, Texas; E. L. Nall, Beaumont, Texas; D. P. Wheat, Beaumont, Texas; John W. Mackey, Beaumont, Texas; Stuart R. Smith, Beaumont, Texas; George D. Anderson, Beaumont, Texas; G. P. Dougherty, Beaumont, Texas; J. V. Fleming, Beaumont, Texas; Robert A. John, Beaumont, Texas; O. J. Todd, Beaumont, Texas; H. G. Robertson, Beaumont, Texas; C. A. Howth, Beaumont, Texas; O. S. Parker, Beaumont, Texas; H. P. Barry, Beaumont, Texas; W. F. Goodrich, Hemphill, Texas; E. B. Colgin, Houston, Texas; J. R. Davenport, Beaumont, Texas; C. M. Smithdeal, Hillsboro, Texas; R. J. Meador, Dallas, Texas; D. W. Blount, Nacogdoches, Texas; George C. Greer, Beaumont, Texas; W. E. Miller, Beaumont, Texas; E. B. Pickett, Jr., Liberty, Texas; V. A. Collins, Beaumont, Texas; John T. Garrison, Nacogdoches, Texas.

R. E. L. SANER, Chairman;
WM. H. BURGESS,
W. L. ESTES,
Board of Directors.

A motion that the report of the Directors be received and the Secretary be directed to cast the unanimous ballot of the Association in favor of the election of the members named therein was adopted, which being done, it was announced that the applicants had been duly elected to membership.

PRESIDENT BEATY: The next item is a paper, "The Liability of Trusts for Private Wrongs," by Mr. W. M. Holland, of Dallas.

[The paper, then read by Mr. Holland, will be found in the Appendix.]

PRESIDENT BEATY: Mr. A. P. Dohoney, of Paris, will present

the report of the Committee on Judicial Administration and Remedial Procedure.

Mr. Dohoney, from the committee, presented the following report:

BEAUMONT, TEXAS, July 2, 1907.

Hon. A. L. Beaty, President of the Texas Bar Association:

We, your Committee on Judicial Administration and Remedial Procedure, submit the following report:

We are of the opinion that the simplicity (in many respects commendable) and laxity of our system of pleading and practice have given rise to certain abuses in the trial of causes that should be corrected.

The purpose of pleading is to enable the parties to arrive at an issue, which, we learned in our student days, is a point where a fact is alleged on one side and denied on the other. Courts are instituted for the trial and determination of such issues, and they should not be burdened and the time of the public consumed in the consideration of immaterial matters and undisputed facts. Only material and controverted issues should be permitted to consume the time and attention of the courts. A perfect system of pleading, therefore, should require that only material issues be formed thereby, and only such issues as are susceptible of proof or disproof by the evidence that can or may be adduced by the parties upon the trial. Under such a system the court and jury would be relieved of the consideration of immaterial and unnecessary matter and much time might be saved in the trial that is now consumed and wasted in the proof of formal and undisputed facts—in by-play and dilatory and obstructive tactics by counsel for defendant without a meritorious defense; and the confusion of the jury and miscarriage of justice prevented.

A strict requirement of the petition should be that it contain allegations of only the pertinent and real facts; and of the answer that it deny only such facts as the defendant can put in issue by proof. It is believed by your committee that there is no more effective means to this end than a requirement that all pleadings be verified by the oath of the pleader, subject to the pains and penalties of perjury or false swearing.

The law applicable to the case should be submitted to the jury by the court with the aid and assistance of counsel; and in argument counsel should be held strictly to a discussion of the issues raised and submitted. Counsel should be required to assist the court in a proper disposition of the case, rather than permitted to "lay for him" for the purpose of a reversal; and the court should be required to accept such aid.

To remedy existing evils and partially accomplish the ends suggested,

we recommend that laws be enacted, or rules of the Supreme Court promulgated, providing as follows:

1. That all pleadings be verified by the oath of the pleader.

2. That the petition be paragraphed, each paragraph to be numbered and to relate to a single issue, and all facts necessary to be alleged upon that issue to be embraced therein.

3. That the general denial be abolished, and the answer, in addition to general demurrer, special exceptions and special pleas now allowed, shall contain specific denials, under oath, of the facts alleged in each paragraph of the petition, or a statement that defendant does not know whether or not such facts are true, and facts not so put in issue shall be taken as admitted.

4. That no amendment of pleadings be allowed after announcement of ready for trial, except upon grounds of mistake or surprise, or other equitable grounds; and ignorance or carelessness of counsel shall not be sufficient grounds.

Mr. Duncan is of the opinion that this requirement should be subject to the sound discretion of the trial court, but subject to review of the appellate courts.

5. In jury trials, after the evidence is all in the court should hear argument of counsel upon questions of law arising upon the evidence, and prepare and submit to counsel his charge, or a copy thereof; at which time counsel shall request in writing such special charges as they may desire. After argument to the jury, the court to read to the jury his general charge and such special charges as he may have allowed.

6. No error shall be assigned in the appellate courts upon the giving or refusing of charges except upon such questions as were called to the attention of the trial court by motion for a new trial.

Our probate system is cumbersome and expensive, and without going fully into the subject, we think much expense could be saved to estates and time and labor to the courts and officers thereof, by amendments to the laws relating to that subject, as follows:

7. That in contested will cases, only the formal proof of subscribing witnesses shall be recorded in the minutes; all other testimony to be incorporated in a statement of facts, agreed to by counsel and approved by the court, or a stenographic report approved by the court, and in case of appeal to the district court such report or statement of facts to be filed with the papers of the case, and have the effect of depositions upon trial in district court.

8. That a uniform period of time be fixed for service of notice of all petitions, applications, reports, etc., in probate matters where notice is required by law, and that such notice shall consist of a brief statement of the nature of the application, report, etc., the date of filing and the

term of court at which it will be heard, and that notice be given by the clerk publishing the same in a newspaper.

Respectfully submitted,

A. P. DOHONEY, Chairman;
I. M. STANDIFER,
RHODES BAKER,
JOHN T. DUNCAN,
Committee.

NOTE.—Mr. Carpenter, of the committee, has neither acquiesced in nor dissented from this report.

Mr. Todd, of Texarkana, moved that the amendments be presented to the Legislature.

The motion was duly seconded and prevailed.

PRESIDENT BEATY: We will now hear a paper on the subject of "Legal Ethics," by Mr. John Charles Harris, of Houston.

[The paper, which was then read by Mr. Harris, will be found in the Appendix.]

PRESIDENT BEATY: The next order of business is the report of the Committee on Legal Education and Admission to the Bar. Mr. C. H. Miller, of Austin, is chairman of that committee.

MR. MILLER: The Committee on Legal Education and Admission to the Bar has not made any report for the last few years. The reason is, I take it, that the passage of the Act of 1903 has been so satisfactory that there has been no occasion for any report from this committee. I would comply with that rule and make no report myself, especially as I have not been able to consult with my fellow members, none of them being present, but on my own initiative I present the following resolution:

Resolved, That the act regulating the granting of license to practice law be so amended as to provide for the appointment by the Supreme Court of the State of a Board of Legal Examiners, to consist of one from each Supreme Judicial District, the examinations to be held at a time and place and in the manner as prescribed by law, except as modified by this amendment.

PRESIDENT BEATY: The adoption of that resolution is moved

and seconded. Those in favor of adopting it say "aye"; opposed "no." The "ayes" carried.

PRESIDENT BEATY: Before calling for the next paper I desire to state that after the reading of that paper there will be a report (I understand it is not a long report) from a committee that has been omitted from the program. The paper referred to is on the subject of "Uniform Legislation," and will be read by Mr. Robert A. John, of Beaumont.

[The paper, which was then read by Mr. John, will be found in the Appendix.]

PRESIDENT BEATY: We will now hear the report of Chairman Rhodes S. Baker of the Committee on Amendments to Our Civil Procedure.

The following report was then presented by Mr. Rhodes S. Baker, of Dallas:

BEAUMONT, TEXAS, July 2, 1907.

To the Hon. A. L. Beaty, President of State Bar Association of Texas:

At the annual meeting of the Bar Association of Texas at Sherman, in 1905, a special committee was appointed, consisting of Judge Sam Streetman, Hon. John C. Townes, Hon. C. L. Bates, Hon. E. B. Perkins and the writer, to prepare and submit a general plan for the regeneration of our system of practice in the courts. It was expected that the committee would report at the meeting to be held at Texarkana in 1906, but from a combination of causes the report was not then ready for submission. To save the committee from complete default, Judge Streetman, after reaching Texarkana and learning that no general report was to be submitted, hastily prepared and read a paper outlining some of his views. The committee was continued, and now, in the discharge of its duty, submits this report:

The political era in which we now find ourselves has been productive of more changes in political and commercial institutions than any like period of the world's history, if we except occasional transformations synchronizing with political or commercial upheavals in times of war. Public opinion, at least in the United States, has reached that state of mind which inquires of any project, not whether there is a precedent, but whether it is abstractly desirable and workable. This generation has seen almost all previous theories as to commercial and scientific limitations dispelled, while the century-old conceptions of the dual relations between the National and State governments have within the present

decade been so often disregarded as to justify a doubt as to their present vitality. It would be natural in such an age of revolution to anticipate the disclosure of many abuses and find many unworthy men in responsible places who had been able, while undisturbed, to conceal their failings from their fellows, but whose resourcefulness was not sufficient to protect them when the cloak of custom was removed. These anticipations seem to have been more than realized, and almost a new terminology has been created to describe the profession of those who devote themselves to discovering and exploiting the evils of the day.

The courts have been singularly free from this scandalous character of criticism. Except in a few States, where particular courts have been under the influence of some dominating corporate or individual influence, and except at particular crises when the passions of an entire community were aroused, there has been little or no suggestion of any misconduct on the part of the courts. The Texas courts, fortunately, are brought within none of the exceptions to which I have referred, and the integrity, ability and industry of the Texas courts is a standing credit to our citizenship, and it must be the wish of every serious-minded citizen that our courts may in the future, as in the past, be signalized by those very attributes which now distinguish them.

We labor, however, under the disadvantage af an insufficient scheme of organization of the courts and are embarrassed by defects in the practice act which seriously hinder the administration of justice, and the complaint is widespread that our courts are not keeping up with the general advancement of the community. The complaint, in our opinion, is well grounded. Society is becoming very highly organized in Texas, and the usual complexity of business, social and political relations, manifests itself along with the developing intensity of organization. Another serious addition to the catalogue of our problems arises from our relations with other governments, State, National and foreign. The intimacy of business contact with other communities is greater than any member of our Constitutional Convention of 1876 could have imagined. In a noted instance now occupying the public thought, it is claimed that interests of the most important character can not be conserved under our State laws because the lawmakers have wholly failed to provide for the given emergency, and that on that account recourse must be had to another, if not a hostile judiciary. This complication, if it fairly exists under a proper interpretation of the law, exists because wholly beyond the contemplation of lawmakers who were building for ordinary relations and not unusual contingencies.

This committee does not claim to be endowed with any unusual grasp of the situation, nor does it propose, even if it were able to do so, to suggest a remedy for every defect in the practice. It is our purpose,

however, to submit proposals for some changes of a radical character which we believe may be brought about without constitutional amendment; and if the proposals be substantially incorporated into our statutory law, we think they will afford substantial relief from the delay, expense and uncertainty of our present system.

We do not favor any substantial constitutional reorganization of the courts. Such a plan would be experimental, and our system is not so objectionable that we can afford to destroy it and start all over again. For the people to have confidence in the courts is a valuable asset of any political community, and a radical constitutional reorganization would greatly impair that public confidence through the confession of total inadequacy with which the proposition would have to be supported. Again, such action would be unjust, in that it would so radically affect the tenure of many of our judges who have devoted themselves for years to the acquisition of that judicial training which so distinguishes them; and lastly, from a practical standpoint, such a recommendation would be unwise because it would be almost hopeless of accomplishment, as it would meet the opposition of such a substantial body of officeholders, including many of our most influential citizens.

These considerations aside, we ought not to abandon our present system with which the people and the bar are acquainted without first attempting to perfect it, and thereby render radical revision unnecessary. The unrest in the public mind and the zealous demand for relief from our chief executive and the substantial response from many of our legislators indicates that the time is ripe for a systematic effort to improve the scheme, and it is to that end that this report is addressed.

The recommendations we make, if critically analyzed, would fall naturally into two classes, viz.: Those relating to the organization, as such, of the courts, and those relating to the steps by which a case is brought to trial and rights are given judicial sanction. We have not attempted any such scientific division, however, believing that the points would be more clearly and quickly comprehended in their relation to our existing laws if presented as here set forth.

Briefly, then, we suggest that the ideas set forth in the following numbered paragraphs be incorporated into the statute law of the State, and that the necessary changes be made in existing law to accommodate it to the innovations proposed:

I.

It should be provided that a suit may be commenced either by the service of a citation upon the defendant before filing petition in the clerk's office, or by the filing of the petition in the clerk's office in the first instance, as now provided. Where suit is commenced under the

proposed plan, the plaintiff should follow up his demand before the trial of the case, or before the issuance of any extraordinary writ, by filing the papers in the case in the clerk's office for docketing in the usual way. A citation or any notice required at the beginning of the suit, or during its progress, should be served either by an officer or by any disinterested person, and in the latter case the service should be proved by an affidavit to be attached to and filed with the papers served.

The reasons for this rule are many:

1. Such a practice is more economical, for in the cases where it was adopted the clerk and sheriff would have no charges except the filing fees allowed the clerk, and in that numerous class of cases where compromises are made there need be no fees incurred unless a consent decree should become necessary.

2. It would promote dispatch in the commencement of suits and in the service of process.

3. It is a plan which has been found to work satisfactorily in a great many States, and no substantial objection has been lodged against it.

II.

The plaintiff's pleadings in the district and county courts, including cases appealed from the justice courts, should be in writing, properly paragraphed and supported by affidavit of verity to the best knowledge and belief of affiant, and to be taken as true unless denied. The general denial should be abolished, and the defendant's pleadings and the pleadings of interveners, whether in the introduction of responsive or new matter, should be likewise in writing, specific in terms and supported by affidavit of like character with that required on the part of the plaintiff.

This rule would greatly simplify the trial of cases, in that it would eliminate the uncontested matter from the consideration of the court and fix the mind of the triors upon those points actually in dispute. A greater certainty of correct results from such concentration of attention upon the vital issues in the case would be marked. The expense of trials would be lessened because less time would be required, and witnesses would not have to be produced to make formal proof of material allegations which were not actually in dispute. Under the present system, it is sometimes necessary to go to considerable expense to secure the attendance of a witness to testify to a point not controverted, and the loss of time of this witness and the delay to the party bringing him to court is not compensated for by any advantage to the public, the court nor the parties litigant. Ordinarily there are few disputed issues in a lawsuit, and in most instances the testimony upon the vital issue is but an inconsiderable part of the whole body of testimony put into the record. This is wasteful in every way, and can not be justified. A

litigant, while entitled to the utmost liberality in developing the truth from a maze of contradiction and doubts, is not entitled to request the courts to investigate a fact which he does not himself believe to be true.

III.

Much criticism has been directed to the establishment of fixed terms of court because of the delay and expense incident to that system of procedure. The plan is to some extent objectionable, but the advantages resulting from the guarantee to every county of at least two terms of court each year are considerable, and should not be lightly abandoned. We must reflect that the opponents to the present system of terms would save no expense if they provided as many as two terms of court, and that if less than two terms were provided, there would be danger of greater damage from the infrequency of the courts than from the other extreme. The terms need not, however, be kept responsible for delay in the handling of controversies.

We recommend that suits be answerable at a fixed time after service, regardless of term time. A reasonable plan would be to require petitions, both original and in intervention, and all cross-actions, to be answered in twenty days after service of process relating thereto, except in publication cases. On default day, if no answer be on file, the clerk should be authorized to note a default upon motion therefor. This default should be made final by the judge when the motion should have remained on file for five days after notation of default by the clerk; or where the clerk refuses to act, then the default might be declared by the judge in the first instance and be made final five days thereafter upon like motion. In either case, if any cause for relief be shown, either before or after interlocutory default, the court should have power to afford protection. After final default, the judgment should be good except as against assault based upon the same character of petition as now required in bills for new trial after term time. An answer which presents no defense to a suit should, on hearing after notice to the adverse parties, either in vacation or at term time, be held no answer, and final judgment by default entered.

The practice proposed would enable the litigant entitled to a judgment by default to get it within a reasonable time, regardless of the remoteness of the regular term of court, and would prevent the delay which so often results under the present system from the filing of a formal answer to a suit to which the party has no real defense.

IV.

A judge should be permitted to hear demurrers and exceptions and make interlocutory orders and final orders in default, and try and deter-

mine non-jury cases, in vacation as well as at term time. He should also be permitted, by consent of the parties, to try jury cases in vacation; the jury in such case to be drawn according to a plan calculated to insure its competency. No juryman ought to serve thereon who has served on any other jury within the previous twelve months. A trial begun in term time might be concluded after adjournment if the court should so direct.

The absolute powers to be exercised by the judge under this section in vacation are those which he could exercise as efficiently in vacation as at term time; and by so doing he could often expedite trials. The power to be exercised by consent could be as well exercised in vacation, where a jury was properly selected, as at term time, and like considerations would be subserved as in non-jury matters. The provision in the preceding paragraph authorizing a judge to strike an answer which presents no defense to a suit would deprive the litigant who was seeking delay only from filing a formal or untrue answer, and thereupon demanding a jury; for if the answer was insufficient and stricken on that account, an order of default would properly following leave nothing remaining in the case for a jury to try. An authorization to the court to conclude a case on trial after adjournment would often prevent a mistrial in cases where a decision is prevented only by the compulsory termination of the trial contemporaneous with the adjournment of the court, and as the proposed authority would rest in the discretion of the court he could in all cases protect himself against conflicting engagements by concluding the case on trial, as might be deemed expedient.

V.

In jury cases a motion for a new trial should be made and acted on before appeal is taken. It should distinctly point out all the matters which are to be relied on for reversal in case of appeal, though the reasons upon which said errors rest need not be given therein. No matter not pointed out should be made a basis of a reversal on appeal, except matters fundamental to the validity of the judgment below. In non-jury cases a motion for new trial (if filed) should be in like form and given like interpretation on appeal as in jury cases. A motion for new trial should be treated as the assignment of errors, and so considered in addition to its functions as a motion for a new trial, unless the party file further assignments of error supplementary to, or inclusive of, the points made in the motion for new trial.

The chief object of this provision is to afford the trial court in all cases an opportunity to pass upon the very point which is to be presented to the appellate court, and to shorten the appellate machinery by affording the parties an opportunity to eliminate assignments of error.

VI.

The clerks of the district courts should be required to make monthly reports to the Attorney General showing the state of the dockets in the respective counties of their districts, and showing further the number of trials had, the causes otherwise disposed of in said courts during the preceding month, and the results of such trials, whether such causes have been previously tried, and with what results, the whole number of causes pending in such courts and the number that have been pending therein for three months or longer, the number of days court has been in session in each county, and whether any special terms have been held in such county. Such reports may be accompanied by the recommendations of the judge of said court as to the future dispatch of business of said court.

The information required by these reports would afford a valuable basis for intelligent information as to the real amount of business being transacted in the courts, and the results obtained in them. Its chief object, however, is to afford a basis for the recommendation incorporated in the succeeding paragraph.

VII.

When the reports prescribed under the last preceding recommendation reach the Attorney General, it should be his duty to carefully examine the same; and when it appears that in any county there is business accumulated and accumulating which can not be disposed of in the usual course in a reasonable time, or when, because of its unusual importance, it should be promptly disposed of before the statutory time for convening of the court in regular term, he should order a special term of court to commence not less than thirty days from the publication of his order therefor, and should assign to hold said special term a regular district judge, giving the preference in such selection to the regular judge of said district, unless he be otherwise engaged, or be unable to serve, in which case the judge whose services are most available, taking into consideration the state of business in his own district, should be selected. The Attorney General, in the publication of the notice of special term, shall state what causes are assigned for trial at said special term, and provision should be made insuring adequate publicity being given to such notice. All cases indicated to be tried at the special term should be then and there disposed of, unless continued for good cause shown. Other cases than those assigned for trial might be disposed of by consent of the parties, or on reference from the regular term after reasonable notice to the parties, or their attorneys. It should be made the duty of any judge assigned to hold a special term to comply with the directions of the Attorney General, unless excused for good cause shown; and due

provision should be made for an allowance to cover the expenses of the district judge assigned to hold any term of court outside of his own district. A fixed allowance of five or ten dollars per day is recommended instead of leaving the matter of expenses to be shown by vouchers, etc. A special term might sit contemporaneously with the regular term of the court in any county or district, and should have all the powers and functions of and be the regular district court of said county sitting in special term.

The dispatch of business which would follow the systematic development of, and attention to, the recommendations in this section warrants the claim that this reform is the most important point made in this report. Justice, to be worthy of the name, should be speedy. Delay in many instances amounts to a denial of all relief, and is the most prolific source of the heavy expenses of litigation. The accumulation of business in the cities keeps far ahead of the facilities provided for disposing of it; and each recurring Legislature is confronted with the alternative of creating more courts or suffering these congested communities to stagger under the burden of overloaded dockets. The expense of creating new courts is considerable, and is especially intolerable when it is observed that in many districts less densely populated the courts are occupied only a small portion of their time in actual trial of cases. The plan proposed would authorize the Attorney General, when business accumulated in the larger counties, to order one or more special terms to sit contemporaneously with the general term, assign the judge or judges from some other district to hold said special terms, and thereby dispose of the accumulated business; and when the business was disposed of, the special terms would be brought to an end, and matters resume their usual course. This would obviate the necessity of creating additional courts, and might even permit some of the existing courts to be disestablished; and, moreover, would afford the judges an opportunity for wider contact with the bar of the State, and would promote that unity of judicial usage which is so desirable. The duties would be attractive rather than otherwise to the judge assigned to duty in an unfamiliar community, while at the same time the expense allowance, if made adequate, would afford an addition to his stated income if not wholly consumed by his actual disbursements. The State would be at no expense on account of additional salaries to new judges, and the incidental expense even of the court itself would be stopped when the end of the special term of court was past.

The relevant constitutional provisions are Sections 7 and 11 of Article 5. The first section provides in part: "The Legislature shall have power, by general or special laws, to authorize the holding of special terms of court or the holding of more than two terms in any county for

the dispatch of business. The Legislature shall also provide for the holding of district court when the judge thereof is absent, or is from any cause disabled or disqualified from presiding." The second section provides in part: "The district judges may exchange districts or hold court for each other whenever they may deem it expedient, and shall do so when required by law." These provisions have been construed from various angles as applied to the acts of special judges, special terms, special territorial limitations, and the places of holding court, and while the express point which would be involved in the consideration of statutes recommended in this section has not been decided, and of necessity could not be decided until such laws are enacted, still it is believed that the courts have already gone quite far enough to warrant the lawyer in anticipating that no successful assault could be made upon the validity of the proposed legislation.

Munzesheimer vs. Fairbanks, 82 Texas, 351.
Lytle vs. Halff, 75 Texas, 128.
Harris vs. Muskgrove, 72 Texas, 18.
Wheeler vs. Wheeler, 76 Texas, 489.
Ellis vs. State, 20 S. W., 501.
State vs. Martin, 30 S. W., 421.
State vs. Hughes, 16 S. W., 490.
Whitener vs. Belknap, 89 Texas, 281.
Armstrong vs. Emmet, 41 S. W., 87.
Daniel vs. Bridges, 73 Texas, 150.

VIII.

Writs of error to the trial court should be abolished. There is no necessity whatever under our system for the dual procedure of error and appeal. An appeal should be perfected as now, by filing bond in the usual form, either with or without supersedeas, with the simple provision that if filed more than twenty days after final judgment, then written notice of such filing should be served upon the adverse parties if resident within the county, or upon their attorneys of record if the adverse parties be not resident within the county; and that in all cases, proof of such service should be shown on appeal.

IX.

An appeal, when perfected, should be followed by filing the record for appeal in the appellate court within sixty days. The appellant should then file his brief within thirty days after the record is filed in the appellate court, and the appellee should file his brief within thirty days after that of appellant, due notice of such filing being given.

It is believed that this plan of filing record and briefs would be a substantial improvement over the present system, in that a more reasonable apportionment of the time is provided, and yet every facility is given to the appellant who desires to speed his cause.

X.

We recommend that after the decision is had in the Court of Civil Appeals any party injuriously affected thereby, if the cause is one of which the Supreme Court has jurisdiction, should have the right, without applying for a rehearing in the Court of Civil Appeals, to make application to the Supreme Court for writ of error within thirty days after the decision in the Court of Civil Appeals, or at his election he might follow the practice now in effect. In the vast majority of cases the filing of a motion for a rehearing in the Court of Civil Appeals is purely perfunctory, and in cases where it is evident the Court of Civil Appeals has apprehended the point for decision, and has squarely decided it, no good reason appears for taking up its time and the time of litigants, and in incurring costs in again urging upon that court the arguments already made threadbare, probably, by much handling. To be privileged to go at once to the Supreme Court with application for writ of error will in nearly every case save at least one month's time. On the other hand, if the Court of Civil Appeals, in the opinion of counsel, has not clearly appreciated the points submitted to it and a rehearing is thought to be desirable, that course would be open.

XI.

The Supreme Court in refusing applications for writs of error should in all cases indicate in writing the grounds of its ruling thereon, and in case the dissatisfied applicant files motion for rehearing, the court should, when moved so to do, permit the application for rehearing to be argued orally upon such reasonable rules and regulations as it may prescribe. We believe no single change in the practice in the Supreme Court would meet with such general approval as that made the subject matter of this recommendation. A lawyer is never so well satisfied concerning the outcome of his case as he is when convinced that his theory of the case has been squarely considered by the court, and that reasonable grounds supporting its action exist. Under the present system, when his application for a rehearing is refused and no reason given, he has a lurking fear that he has not made his point clear, and that the court has not actually considered his conception of the case. It is probably true, as a matter of fact, that this apprehension on the part of a disappointed litigant or his counsel is seldom well founded, but if in any appreciable number of instances, it is well founded, that should be sufficient justifica-

tion for the attempt to develop a more satisfactory plan than that now followed. Doubtless the Supreme Court would have no objection to the proposed change, provided in practice it did not consume too much of the time of the court. That tribunal is as much interested as any litigant in striving for substantial justice in every case, and it is undoubtedly true that accuracy in reaching a conclusion upon the facts in a given case is much promoted by the attempt to formulate reasons in support of that conclusion. If in practice the Supreme Court, with the numerical strength now authorized by law, shall be unable, after devoting to every controversy coming before it that degree of attention and amount of time necessary for its proper disposition, to dispatch its business, then its jurisdiction should be restricted or its numbers increased.

XII.

A final matter of probably minor importance is yet to be touched on. The laws relating to attachment and garnishment should be amended so as to provide that defects either in form or substance in the affidavit, bond or writ of attachment or garnishment, may be amended at any time upon leave of the court, and when so amended shall relate back to the date of the original filing. In addition to this, the garnishee should be required in all cases to file his answer in the court where the proceedings against him are commenced, whether he resides in that county or not, with a provision that, if a non-resident of the county where the proceedings are pending, the garnishee may claim in his answer the right of trial in the county of his residence in the event any affidavit controverting his answer be filed. Ample protection should be afforded him by making it beyond the power of the court to render a judgment against him in the county not of his residence when he makes this prayer in the answer. This change would permit the repeal of all the cumbersome, unsatisfactory and illogical articles of the statute relating to non-resident garnishees. It should further be provided that the garnishee should file his answer within ten days after service if a resident of the county where the proceedings are brought, and within twenty days after the service if a non-resident of such county, with appropriate provisions for default against such garnishee for his failure to answer within the stipulated time.

The expediency of the indicated changes is obvious. Every enlightened system of laws has long since abandoned the idea that advantage should be taken of defects in court proceedings when thereby justice might be thwarted, and when at best there would result merely a vindication of a purely technical and arbitrary rule. We permit the amendment of the most important pleadings in other branches of litigation, even though such pleadings be verified. We permit appeal bonds to be corrected, and

no good reason suggests itself for holding one who files a pleading in a garnishment proceeding to any stricter accountability than in other causes. The result of the present rule is frequently a denial of justice without any compensating public advantage. The more liberal rule is being adopted in many jurisdictions with respect to the so-called extraordinary writs, and Texas, being one of the pioneers in the way of liberal procedure in the courts, ought not to lag behind in this particular branch. The other recommendations in this section are in line with the general spirit of this report. They would expedite the disposition of garnishment cases, and would relieve our system of the spectacle exhibited in sending a commission to take the answer of the non-resident garnishee when he could as readily file his answer out of his county as in it. If the answer admits a liability, and judgment is rendered in conformity with it, the garnishee is not injured; if it denies a liability, and the garnishee is discharged on his answer, he is not injured; while in the single instance of a controversy he would be amply protected by the compulsory transfer of the proceedings to the county designated in the answer.

This completes the recommendations we desire at this time to press upon the consideration of the Association. They involve no experimental schemes, but have been tried out in many jurisdictions and found flexible and yet energetic. We submit, in closing, this general recommendation, viz.: Whether this Association commits itself to these or other changes in our system of practice, it should in any event make it the duty of some accredited representatives of this Association to assist the lawmaking power in the formulation of the changes approved. These representatives might accomplish much good by appearing in a proper way before legislative committees and advocating and opposing changes under consideration. They should have the power to enlarge their members by calling to their assistance such other members of this Association as might be qualified to assist in the given emergency by reason of peculiar experience in respect to the matters up for discussion. It makes little difference in the abstract what may be the opinion of this Association, but it might conceivably make much difference if it should take steps to impress that opinion upon lawmakers who presumptively desire to reflect the views of the people. Such a body would listen attentively to an expression of the collective opinion and experience of so representative an Association as this.

Judge Perkins asks that we state that he has not had time to consider the matters touched on in this report, and reserves his opinion concerning same; and this report is, therefore, submitted only on behalf of the subscribers hereto.

Respectfully submitted,

RHODES S. BAKER.

MR. MILLER: This report covers very important matters, and it ought to be considered, I think, in connection with the report of the Committee on Jurisprudence and Law Reform. I, therefore, move that the consideration of this report be postponed until tomorrow and be taken up immediately before the consideration of the report on Jurisprudence and Law Reform.

The motion was duly seconded and prevailed.

PRESIDENT BEATY: Before you adjourn, gentlemen, I desire to make one announcement. The Board of Directors have deemed it proper and advisable to postpone until in the afternoon tomorrow the delivery of the Annual Address by Judge Yancey Lewis, and unless there is objection the Annual Address will be deemed postponed until 2 o'clock tomorrow afternoon.

There was no objection.

Upon motion, the Association adjourned until 10 o'clock a. m.

SECOND DAY—MORNING SESSION.

The Association was called to order by President Beaty.

MR. MILLER: I move that the reports of the special committee submitted by Mr. Baker, and of the regular committee submitted by Mr. Young, on Law Reform, be referred for further consideration to a Special Commission, as follows:

"The President of this Association shall within the next thirty days appoint a committee and publish in the press the names of the members thereof, to consist of one member of the Supreme Court, two members of the Court of Civil Appeals, three district judges, three attorneys of eminence at the bar and known to be interested in law reforms.

"The duty of this Commission shall be: To prepare an exhaustive and comprehensive report dealing with the needed reforms in our systems of courts and civil procedure, to the end that justice in civil causes may be administered in the most economical manner and with the least delay and the greatest certainty practicable.

"The report of said Commission shall be printed and copies thereof mailed to each member of this Association not less than thirty days previous to the next annual meeting of this Association.

"The sum of $500, or so much thereof as may be necessary, is hereby set aside out of the funds now in the hands of the Treasurer to be expended under the direction of said Commission in the discharge of said duties."

The motion was seconded by Mr. Young.

Mr. Miller said in support of his motion:

"The most important matter that we have to deal with as lawyers is law reform. The valuable work we do is to improve the administration of justice. During the last three years I have had some opportunity of looking at the practice of law somewhat from the standpoint of the outsider, and I am thoroughly convinced that the bar has been very derelict in its duty to the public in not adopting such improvements as are practicable towards the better attainment of justice. The lawyer is not primarily a producer of wealth, and the only excuse, therefore, for his support by the other classes of the community is that he should properly perform his duties, not only as a professional man, but in the higher calling of a citizen. The medical profession has made great advances in the way of preventing diseases, and we should keep pace with modern development in devising a more perfect system for the expeditious and economical administration of justice. It requires for the simplest case at least a year's time to reach a final conclusion in the courts. This is, of course, absurd. There is no reason why a State like Texas, ready to adopt the best ideas wherever they may appear, should not have the best judicial system and mode of procedure in the civilized world."

Mr. Todd, of Texarkana, also seconded the motion, and spoke in support of same.

After various suggestions from different members as to a change in the personnel of the Commission, the motion was adopted as given above.

PRESIDENT BEATY: I will read you a telegram received from Hon. John T. Wheeler:

GALVESTON, TEXAS, July 2, 1907.

L. Q. C. Lamar, Care F. D. Minor, Beaumont, Texas:

Owing to the very serious illness of my sister, can not keep my engagement as per program. Kindly express my apologies and regrets to the Texas Bar Association. JOHN T. WHEELER.

MR. SANER: I move that Mr. Wheeler's paper, "Needed Reforms in Our Probate System," be published in the Proceedings of this meeting.

The motion was duly seconded and carried.

PRESIDENT BEATY: The next order of business is the report of the Committe on Commercial Law, of which Mr. F. Charles Hume, of Houston, is chairman.

MR. HUME: In so far as the committee has been able to ascertain, without investigation, the present status of this branch of the law is reasonably satisfactory.

In this report Mr. M. H. Gossett, of Dallas, concurs.

PRESIDENT BEATY: We will now hear a paper entitled "The Honor of the Bar," by Mr. Thomas H. Franklin, of San Antonio.

[The paper, which was then read by Mr. Franklin, will be found in the Appendix.]

There was no report of Delegates to American Bar Association.

PRESIDENT BEATY: The next in order of business is the report of the Committee on Deceased Members.

Mr. L. Q. C. Lamar, from the committee, presented the following report:

REPORT OF COMMITTEE ON DECEASED MEMBERS.

To the President and Members of the Texas Bar Association:

Your committee regrets to report that since the last meeting of this Association grim death has again visited us and removed from our midst four of the most highly esteemed and honored of our members.

HON. M. W. DODD.

On January 13th of this year we sorrowfully learned of the death of Hon. T. W. Dodd, of Laredo, a member of this Association held in high

regard by every acquaintance in this Association and every member of his local bar. He had been a member of this Association since 1886 and had ever and readily responded to all calls upon him by and on behalf of this Association, and was amongst its oldest and highly regarded members, whose loss is deeply felt and sincerely regretted by each and every one of us.

JUDGE RICHARD MORGAN.

On February 13th of this year we were again called upon to bow our heads in sorrow, for our Association was again stricken in the untimely death of Judge Richard Morgan, of Dallas. Judge Morgan at the time of his death was judge of the Forty-fourth district court of the State, and county of Dallas, and was at that time engaged in serving his third term after a long and successful practice at the Dallas county bar. He was held in high esteem and regard by all who knew him, and those who knew him best loved and honored him most for his high regard and fearless enforcement of the legal and ethical code which made up his life and practice, both off and on the bench. Judge Morgan was a charter member of this Association, composing one of the "Fathers of the Texas Bar," of which original number but forty-four remain.

HON. STANLEY WELCH.

Cowardly assassination has likewise reached into our midst and struck down another honored and esteemed member of this body. On the night of November 9, 1906, while in the discharge of duty and the attempt to maintain peace, law and order in elections on the banks of the Rio Grande, the Hon. Stanley Welch was foully murdered while asleep by an unknown hand. Judge Welch, by virtue of his ability, force of character and peculiarly exceptional qualifications for the office of judge of his district, was warmly loved and appreciated in a manner second to none by both his colleagues and brothers of the bench and bar. A member of this Association since 1900, he had ever been filled with interest and devotion to its purposes, objects and advancement.

MR. J. I. WILSON.

Among our young men, we have suffered as well in the death of Mr. J. I. Wilson, of the Houston bar, a young man of sterling worth and marked ability, just entering upon a field to which he was most wonderfully adapted. Studious, comprehensive, clear, forceful and impressive in his chosen field, he gave promise of a great future. A member of this Association since 1902, Mr. Wilson was ever characterized by active and helpful interest and attendance, and it is with deep regret to us that he should so soon be taken from our number.

Your committee reports at this time the ravages of the Great Reaper,

yet feels itself incapable of paying fit tribute to those it here enumerates except at length, and so leaves for further report in the proceedings of this meeting the memorial report of the lives and virtues of these members, as so beautifully set out by those members added to this committee for such purpose by your President.

PRESIDENT BEATY: We will now hear the report of the Committee on Grievances and Discipline, of which Mr. John C. Walker, of Galveston, is chairman.

Mr. Walker presented the following report:

REPORT OF COMMITTEE ON GRIEVANCES AND DISCIPLINE.

To the President and Members of the Texas Bar Association:

Your committee reports that no complaints have been made during the past year.

Judging from the uniformity in this respect of all the reports of the Committee on Grievances and Discipline during the past twenty-five years, it might be assumed that in this body there have been no professional derelictions, no violation of the code of legal ethics, none of the weaknesses to which ordinary human nature is subject, and that the perfection of the millennium is embodied in the personnel of the Texas bar. Is this really the case? Do we not at least occasionally hear among laymen slighting remarks about lawyers and their standard of professional duty and morality, based upon acts of perhaps a single individual, which has shocked the moral sense of the outsider who had theretofore looked to the bar to furnish exemplars of moral conduct? Is it not the living truth that some lawyers know or have been informed of transactions by others which would not bear the light of day?

If such conditions exist in any degree, why are they not brought before this Association? Several answers are suggested. Every respectable attorney hesitates to make charges he can not prove with the certainty required to convict in a criminal prosecution, and the very nature and secrecy of shady practices most frequently forbid absolute proof, as the very persons who complain would either deny their own assertions or profess loss of memory upon an investigation being held.

Another reason why such matters are not more frequently brought forward is that attorneys wish to avoid making open enemies of the person accused and his friends; but perhaps the most potent cause of blindness to professional shortcomings is that public opinion in the particular community does not put its stamp of disapproval upon questionable acts of lawyers. We may go further, and say that in some communities, notably in cities, an active demand exists for the conscienceless, unscrupulous

lawyer, who is ready to do the unclean work demanded by the unclean client. This should not be. Lawyers in every age have dominated the formation of public opinion. Instead of descending to a low standard of morality in conformity with their surroundings, they should impress upon the other elements of society those characteristics which in times past compelled laymen to look up to the bar with admiration and respect.

Lawyers are but human beings, and are most frequently subject like other men to the influences of their surroundings. A license to practice law makes a man neither saint nor sinner, and it would be wonderful, indeed, if each individual composing the large class of legal practitioners should be of immaculate whiteness—that among all the legal flock the traditional black sheep should be missing.

The idea that the only crimes are those punishable by law is fallacious in the highest degree, for many acts not within the criminal statutes may be properly stigmatized as offenses against the moral law. Persons guilty of questionable practices rewarded by money should feel the weight of public opinion when the offender is outside the profession, but one of its members who, for the sake of gain, violates his own conscience and the moral sense of others, though no statute can touch him, should suffer the bitterest punishment which can be inflicted upon a lawyer—the openly expressed and undisguised contempt of the fellows of his craft.

Commercialism, which is co-existent with the immense financial interests of the country, perhaps has not to a great extent invaded Texas, but with our prospective growth and development, we may anticipate conditions similar to those existing in the great centers of wealth and monopoly.

The most deplorable of these conditions from a legal standpoint is the production of a class of lawyers of education and ability who degrade their profession by teaching the great "captains of industry" and corporation magnates how to evade, break and trample upon the law. There is a wide distinction between representing a defendant, though a manifest offender, and advising him in advance how to commit the illegal act with impunity, thus making the lawyer an accomplice or accessory before the fact. The former is the highest duty of the advocate, for every man is entitled to have counsel, whatever the accusation; but the latter can only strengthen at least a part of the laity in the belief sometimes expressed that the law, once an honorable profession, has descended to the level of a disreputable trade. The so-called financier who obtains millions by fraudulent manipulation of stocks and bonds or corporation properties is necessarily guided by legal advice, and when he obtains, and presumably pays for it, must look with disgust and contempt upon the brainy tools with which he has accomplished his nefarious work.

This subject has lately been touched upon by Justice Brewer, of the United States Supreme Court, who lately said in a public address con-

cerning the lawyer: "He has no right to barter his own integrity, to sell his honor or his conscience. * * *"

I appeal for a higher standard of professional ethics. I appeal to every lawyer to put his heart alongside his head, to mix his conscience with his brains. Let him have the courage to say to his client, "It may be legal, but it is dishonest and I will have nothing to do with it."

That distinguished citizen and man of upright life, Hon. William J. Bryan, in an address to a body of lawyers not long ago, said: "I believe the day will come in this country when we will not have so many men who will sell their souls to make grand larceny possible. Perhaps some time it will not be less disgraceful for a lawyer to assist in a gigantic robbery, than for a highwayman to go out and hold up the wayfarer."

Many venial derelictions, especially breaches of etiquette, between lawyers may be attributed simply to want of knowledge. The unwritten code of legal ethics was once as well known as Blackstone or Greenleaf, but of late years the rigid rules regulating professional intercourse have gradually become relaxed until many of them have been altogether forgotten. Without desiring to encroach upon the province of another committee, we suggest that every law student should study and be examined upon all branches of this subject, and should thoroughly understand the duties of the lawyer to his brethren at the bar, his clients and the public, as thoroughly as the legal principles learned from his text books.

Each member of this Association should consider the honor of the bar as his own, and should zealously strive to preserve and protect it. Let each member report any violations of professional duty without fear or favor, and if guilt be established, let punishment be promptly meted out to the offender, and let the conduct of its membership ever be such as to inspire the highest respect for our bar, not only within our own borders, but wherever is heard the name of Texas.

Respectfully submitted,

JOHN C. WALKER,
For Committee.

I concur in the above.

HIRAM F. LIVELY, Dallas.

The report, on motion, was received and filed.

The following report of the Board of Directors was submitted by Mr. Saner:

BEAUMONT, TEXAS, July 3, 1907.

Hon. A. L. Beaty, President Texas Bar Association:

The Board of Directors beg leave to report that the following persons have applied for admission to membership in this Association, and the Board of Directors having duly considered the applications and found

the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in this Association: Carlisle B. Martin, Beaumont, Texas; P. A. Dowlin, Beaumont, Texas; E. E. Easterling, Beaumont, Texas; E. H. Hardy, Beaumont, Texas; M. S. Duffie, Beaumont, Texas; John F. McLaurin, Brookland, Texas; J. B. Bisland, Orange, Texas; M. W. Lowry, Beaumont, Texas; S. P. Skinner, Ellis county; R. E. Moore, Jefferson county; W. W. Dies, Kountze, Texas; Sol E. Gordon, Beaumont, Texas.

R. E. L. SANER, Chairman.
WM. H. BURGESS,
W. L. ESTES,
Board of Directors.

A motion that the report of the Directors be received and the Secretary directed to cast the unanimous ballot of the Association in favor of the election of the members named therein was adopted, which, being done, it was announced that the applicants had been duly elected to membership.

PRESIDENT BEATY: At 2 o'clock the Annual Address will be delivered. The ladies are invited to be here at that session.

Upon motion, the Association adjourned until 2 o'clock p. m.

SECOND DAY—AFTERNOON SESSION.

The meeting was called to order by President Beaty.

PRESIDENT BEATY: Ladies and Gentlemen: It is a matter thoroughly known that the lawyers of this State, in common with the people at large, love the members of the Supreme Court. Today, as a fit tribute and as a token of this love, it is proposed to do honor to the two justices of that court who have been longest upon the bench. Our Brother Ball will express the sentiment.

HON. T. H. BALL: Upon the Supreme bench of Texas there now sit three judges, each worthy the best traditions of that bench. Two of these judges have to their credit a long service record, which has proven a benediction to Texas. Close and diligent application, profound knowledge of the law, rare discrimination and a clear conception of the written law has marked their work and

rendered their decisions worthy to be classed as great opinions by great judges. Chief Justice Gaines and Associate Justice Brown have by their long and faithful service upon the bench commanded the admiration and respect and won the devotion of the Texas Bar.

Because of their long and eminent service, and because of the respect, admiration and devotion which the lawyers of Texas entertain for these two great jurists, it has been deemed proper that their portraits should be placed within the Supreme Court room at Austin, in order that those who come after us, and those who have not been permitted to know them as judges and as members of this Association, in years to come when reading their decisions to their successors upon the bench, they will be privileged to look upon the reproduction upon canvas of the great judges who urged them.

On behalf of the lawyers of Texas, it is my deeply appreciated privilege today to present to the Bar Association of Texas these portraits of these two great jurists, and I am commissioned to ask that this Bar Association will receive them and take special steps to have them placed within the Supreme Court room of Texas, that Mecca to which all of us do turn for a settlement of all controversies, and where Texas litigants will continue to perplex the courts until the second coming of the Prince of Peace.

PRESIDENT BEATY: As the official head of the Texas Bar Association, I may say that without taking any vote this Association will accept this trust.

The distinguished justices who are honored today are not present, but we have with us the one associated with them upon the bench, and who is nearer to them personally perhaps than any other, and I shall ask Justice Williams of the Supreme Court if he will not respond to what has been said.

JUSTICE WILLIAMS: Mr. President and Gentlemen of the Texas Bar Association: On behalf of the Supreme Court of Texas, I with great pleasure accept this beautiful gift.

PRESIDENT BEATY: We will now hear the Annual Address by Judge Yancey Lewis, of Dallas.

[The Annual Address, which was then delivered by Judge Lewis, will be found in the Appendix.]

PRESIDENT BEATY: There are no further papers on the program, therefore the next order of business is the election of officers.

Mr. John Charles Harris, of Houston, placed in nomination Mr. A. E. Wilkinson, of Austin. No other nominations being made, it was moved that the nominations be closed and that the Secretary be directed to cast the unanimous ballot of the Association for Mr. Wilkinson's election, and Mr. Wilkinson, upon such ballot, was declared to be the new President of the Association.

PRESIDENT BEATY: Gentlemen of the Bar Association: In introducing my successor, who will preside over the remainder of the meeting, I desire to tender to you my thanks for the honor you have done me and for your kindness and your patience with me. I esteem it the pride of my life to have presided as President over the greatest convention that the Texas Bar Association has ever held. I introduce to you Judge Wilkinson, your President.

(Judge Wilkinson, in some appropriate remarks, returned his thanks and expressed his appreciation of the honor done him.)

Mr. C. H. Miller, of Austin, placed in nomination for Vice-President, Judge Yancey Lewis, of Dallas, and Mr. W. L. Estes, of Texarkana, placed in nomination Mr. Hiram Glass, of Texarkana. Before the nominating speeches were concluded, Mr. Estes withdrew the name of Mr. Glass and moved that the nominations be closed, and that the Secretary be directed to cast the ballot of the Association for the election of Mr. Lewis as Vice-President.

The motion was unanimously carried, and on ballot Mr. Lewis was declared elected to the office of Vice-President.

Judge Lewis was introduced by Judge Wilkinson, and replied as follows:

Mr. President and Gentlemen of the Convention:

It is certainly a very heartfelt expression that I indulge in in returning my thanks for the honor that you have bestowed upon me. I prize peculiarly the recognition of my professional brethren in generously and voluntarily honoring me. I prize it more

than any other distinction, because most distinctions that are obtained are sought. There is an old story that an elderly gentleman once indulged in some remarks when a lady asked him where he expected to go when he died, to which he replied that he hadn't made up his mind where he would go to, as he had friends in both places. I believe if that question was put to me, I would ask "Where are the lawyers? I am going to elect to stay with my associates." Of course, this leads us into deep water; we get into dangerous grounds, because public opinion is that there never was any doubt where the lawyers go to. On the other hand, I have not the least doubt in my mind where all good lawyers go to. If he doesn't go to heaven, why heaven is the worse for his absence.

I thank you, gentlemen, for your kindness.

PRESIDENT WILKINSON: The next in order is the election of a Secretary.

MR. SONFIELD: I know of no office that calls for more labor than that of the Secretary, and I know of no Association that has been better served by such an officer than has the Texas Bar Association. I rise simply to nominate the one who now holds the position, the one from whom you did (I did) receive the letter that "dues were due"; one who never forgets; one who is ready at all times to serve us in any way he possibly can. I nominate my brother, L. Q. C. Lamar.

No other nominations being made, it was moved that the nominations be closed and that the Chairman of the Board of Directors be directed to cast the unanimous ballot of the Association for Mr. Lamar's re-election, and Mr. Lamar, upon such ballot, was declared to be Secretary of the Association.

PRESIDENT WILKINSON: I have the pleasure of introducing to you Mr. L. Q. C. Lamar, of Dallas.

MR. LAMAR: Mr. President and Gentlemen of the Bar Association: It is with a deep feeling of appreciation that I accept this re-election to the office of Secretary of your Association. I differ with my friend Mr. Sonfield, however, in his statement that the job is a thankless one, for I have always considered that the honor

of an election to any office at your hands was commensurate to the amount of work that has been done or could be done. I shall endeavor to make you even a better Secretary than I have, even to the collection of "dues."

PRESIDENT WILKINSON: We have one more office to fill, that of Treasurer. I move that the Secretary cast the ballot of the Association for the election of Mr. Williams as Treasurer, he having served since the organization of this Association.

The motion prevailed, and the Secretary was directed to cast the unanimous ballot of the Association for Mr. Williams' election.

PRESIDENT WILKINSON: The next in order is the election of a Board of Directors.

MR. H. C. CARTER, of San Antonio: I move that R. E. L. Saner, J. L. Dyer, J. C. Crisp, Edgar Watkins and John T. Duncan be nominated as Directors.

No other nominations being made, it was moved that the nominations be closed and that the Secretary be directed to cast the unanimous ballot of the Association for the election of R. E. L. Saner, J. L. Dyer, J. C. Crisp, Edgar Watkins and John T. Duncan as Directors of the Association. Declared elected.

PRESIDENT WILKINSON: The next in order is the election of Delegates to the American Bar Association.

Mr. T. H. Ball, of Houston; Mr. Hiram Glass, of Texarkana, and Mr. R. G. Street, of Galveston, were placed in nomination as Delegates to the American Bar Association.

No other nominations being made, the nominations were closed and the Secretary directed to cast the unanimous ballot of the Association for the election of T. H. Ball, Hiram Glass and R. G. Street as Delegates to the American Bar Association.

PRESIDENT WILKINSON: I call to the attention of the Association these telegrams:

FORT WORTH, TEXAS, July 3, 1907.

President Texas Bar Association, Beaumont, Texas:

Fort Worth invites you most earnestly to meet with us next year.

W. D. HARRIS, Mayor.

FORT WORTH, TEXAS, July 3, 1907.

President Texas Bar Association, Beaumont, Texas:

The lawyers of Fort Worth most earnestly invite you to hold your next meeting in this city. SIDNEY L. SAMUELS.

MR. HARRIS: I move, sir, that Fort Worth be made the next place of meeting.

PRESIDENT WILKINSON: It is moved and seconded that Fort Worth be selected as the next place of meeting. Those in favor of the motion say "aye"; opposed "no." The motion is carried.

MR. BEATY: I move that the thanks of this Association be tendered to the bar of Beaumont and to the people of this city for the excellent entertainment and many courtesies extended us.

MR. HARRIS: I desire, gentlemen, to add an amendment to that, that the thanks of this Association be tendered to the beautiful and accomplished ladies of Beaumont for their presence here.

MR. BEATY: I gladly accept the amendment.

MR. BEATY: I move that thanks be tendered the *Galveston News*, the *Houston Post*, and last but not least, the *Beaumont Enterprise*, for their report of the proceedings of this meeting.

PRESIDENT WILKINSON: All of these amendments and many others as good are accepted.

It was moved that the Association adjourn (which was duly seconded) and the motion prevailed.

AMERICAN BAR ASSOCIATION.

OFFICERS FOR 1907-1908.

President,

Hon. J. M. Dickinson.....Chicago, Ill.

Secretary,

John Hinkley.....Baltimore, Md.

Treasurer,

Frederick E. Wadhams.....Albany, N. Y.

Vice-President for Texas,

R. E. L. Saner.....Dallas, Texas.

Member of General Council for Texas,

William H. Burgess.....El Paso, Texas.

Local Council for Texas,

Hiram Glass.....Texarkana, Texas.
F. Charles Hume, Jr.....Houston, Texas.
John L. Dyer.....El Paso, Texas.
Clarence H. Miller.....Austin, Texas.

TEXAS BAR ASSOCIATION.

OFFICERS AND COMMITTEES.

1907-1908.

A. E. WIKINSON.....President.....Austin.
YANCEY LEWIS.....Vice-President.....Dallas.
L. Q. C. LAMAR.....Secretary.....Dallas.
W. D. WILLIAMS.....Treasurer.....Fort Worth.

BOARD OF DIRECTORS.

R. E. L. Saner, Chairman.....Dallas.
Jno. T. Duncan.....La Grange.
J. C. Crisp.....Beeville.
Jno. L. Dyer.....El Paso.
Edgar Watkins.....Houston.

Committee on Jurisprudence and Law Reform.

R. E. Carswell, Chairman.....Decatur.
S. B. Cantey.....Fort Worth.
S. C. Padelford.....Cleburne.
V. M. Clark.....Sulphur Springs.
Nelson Phillips.....Dallas.

Committee on Judicial Administration and Remedial Procedure.

W. J. Moroney, Chairman.....Dallas.
Eugene Williams.....Waco.
Rhodes S. Baker.....Dallas.
J. A. L. Wolfe.....Sherman.
J. M. Pearson.....McKinney.

Committee on Legal Education and Admission to the Bar.

Jno. C. Townes, Chairman.....Austin.
Geo. E. Miller.....Fort Worth.
Lewis R. Bryan.....Houston.
T. D. Montrose.....Greenville.
P. A. Turner.....Texarkana.

Committee on Commercial Law.

W. M. Crook, Chairman.....Beaumont.
John L. Dyer.....El Paso.
M. E. Kleberg.....Galveston.
Sam R. Perryman.....Houston.
J. W. Thompson.....Dallas.

Committee on Publication.

D. E. Simmons, Chairman.....Austin.
W. P. Allen.....Austin.
H. R. Bondies.....Dallas.
W. M. Holland.....Dallas.
R. H. Connerly.....Austin.

Committee on Deceased Members.

Tillman Smith, Chairman.....Fort Worth.
A. L. Burford.....Mt. Pleasant.
L. Q. C. Lamar.....Dallas.

Committee on Transportation.

M. A. Spoonts, Chairman.....Fort Worth.
Hiram Glass.....Texarkana.
Jas. A. Baker, Jr.....Houston.

TEXAS BAR ASSOCIATION

OFFICERS AND [illegible]

[illegible]

A. F. Wilkinson	[illegible]	Austin
Vasser Lewis	[illegible]	Dallas
R. Q. C. Lamar	[illegible]	Dallas
W. D. Williams	[illegible]	Fort Worth

BOARD OF DIRECTORS

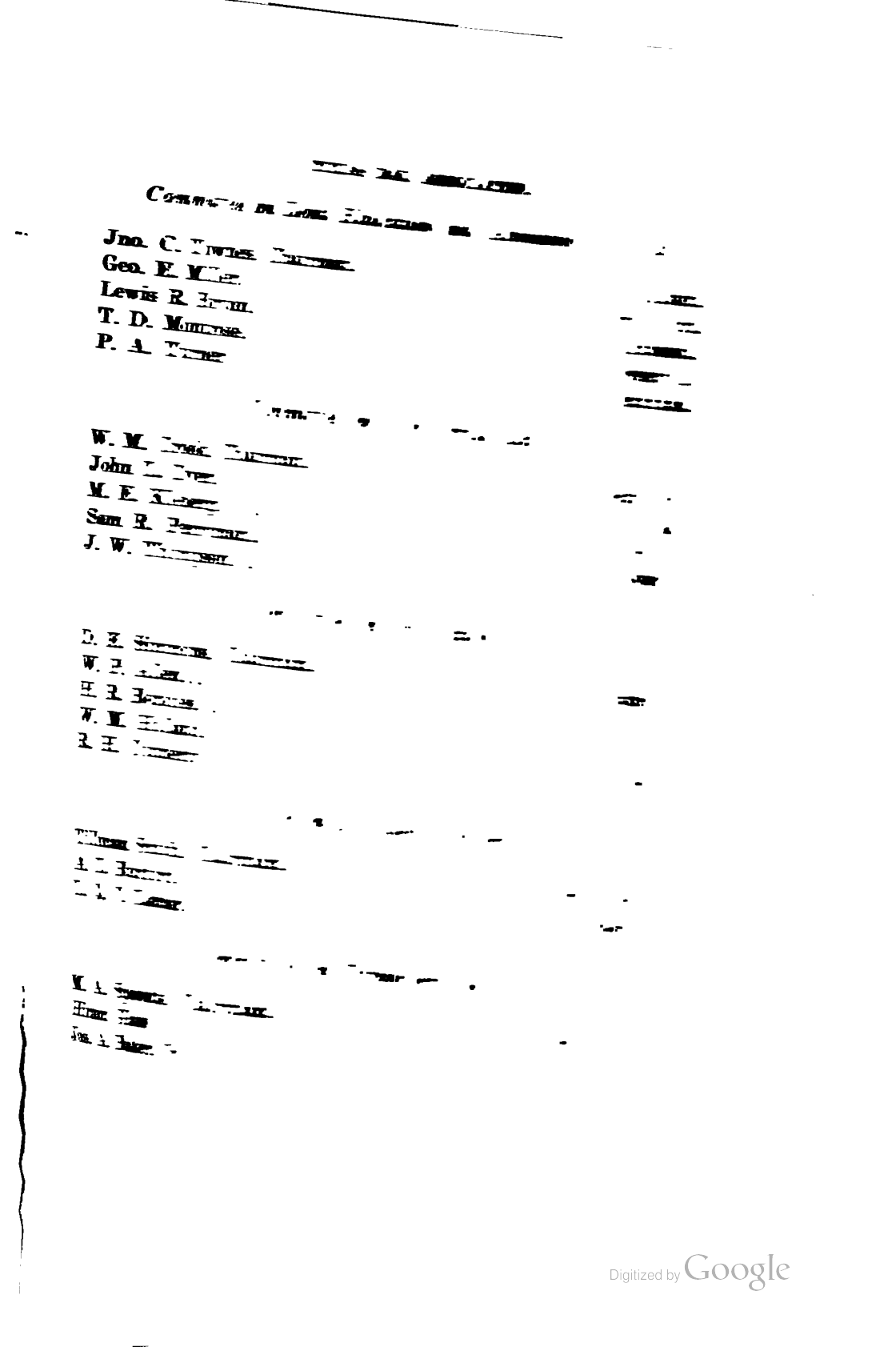
[illegible], Chairman	Dallas
[illegible]	[illegible]
[illegible]	Beeville
[illegible]	El Paso
[illegible]	Houston

[illegible] on Jurisprudence and Law Reform

[illegible], Chairman	[illegible]
[illegible]	Fort Worth
[illegible]	[illegible]
[illegible]	San Antonio
[illegible]	Dallas

[illegible] on Judicial Administration and Remedial Process

W. J. Moroney, Chairman	Dallas
Eugene Williams	Waco
Rhoden S. Baker	Dallas
J. A. L. Wolfe	Sherman
J. M. Pearson	McKinney



Committee on Grievances and Discipline.

W. H. Allen, Chairman.....Dallas.
E. S. Connor.....Paris.
C. S. Bradley.....Groesbeck.
P. C. Thurmond.....Bonham.
W. J. McKie.....Corsicana.

ROLL OF MEMBERS WITH RESIDENCE AND DATE OF ENROLLMENT.

Abbott, Jos., Hillsboro.....July 17, 1882.
Abernathy, W. B., McKinney.....July 13, 1905.
Abney, Hamp B., Sherman.....July 12, 1905.
Adams, J., Kaufman.....July 3, 1902.
Alexander, W. M., Dallas.....July 20, 1896.
Allen, W. H., Terrell.....December 14, 1883.
Allen, W. P., Austin.....July 29, 1897.
Anderson, Wm. W., Houston.....July 29, 1897.
Andrews, Frank, Houston.....July 25, 1900.
Andrews, Jesse, Houston.....July 13, 1904.
Armstrong, W. T., Galveston.....July 25, 1900.
Armistead, Geo. J., Texarkana.....July 11, 1906.
Armistead, W. T., Jefferson.....July 11, 1906.
Ashe, Chas. E., Houston.....July 13, 1904.
Atlee, E. A., Laredo.....July 24, 1886.
Autrey, Jas. L., Beaumont.....July 29, 1891.
Aubrey, Wm., San Antonio.....December 25, 1884.
Avery, J. M., Dallas.....July 29, 1881.
Bailey, Edw. H., Houston.....July 13, 1904.
Baker, Jas. A., Jr., Houston.....July 17, 1882.
Baker, Rhodes S., Dallas.....July 2, 1902.
Baldwin, J. C., Houston.....July 28, 1898.
Baldwin, B. J., Paris.....July 12, 1905.
Ball, Robt. L., San Antonio.....December 25, 1884.
Ball, T. H., Houston.....July 25, 1894.
Ballew, W. W., Corsicana.....July 11, 1906.
Barwise, T. H., Jr., Fort Worth.....July 11, 1906.
Barbee, Will L., Houston.....July 13, 1904.
Bartlett, F. W., Dallas.....July 2, 1902.
Bass, C. L., San Antonio.....July 8, 1903.
Bates, C. L., San Antonio.....July 8, 1903.

Bates, Wharton, Houston . . . . . July 8, 1903.
Batsell, Chas., Sherman . . . . . July 12, 1905.
Beall, T. J., El Paso . . . . . July 24, 1886.
Bean, B. F., Groveton . . . . . July 26, 1899.
Beaty, A. L., Sherman . . . . . July 2, 1902.
Beaty, Jno. T., Jasper . . . . . July 13, 1904.
Belden, Sam'l, Jr., San Antonio . . . . . July 13, 1903.
Bell, A. J., Karnes City . . . . . July 20, 1897.
Bell, C. K., Fort Worth . . . . . July 13, 1905.
Benfield, J. H., Jefferson . . . . . July 11, 1906.
Berry, W. C., San Antonio . . . . . July 8, 1903.
Blake, S. R., Bellville . . . . . December 14, 1883.
Bliss, Don A., Sherman . . . . . July 12, 1905.
Bondies, Harry R., Dallas . . . . . July 13, 1905.
Bookhout, John, Dallas . . . . . July 2, 1902.
Boone, Gordon, Navasota . . . . . July 13, 1904.
Borden, Henry L., Houston . . . . . July 13, 1905.
Botts, Thos. H., Houston . . . . . July 13, 1905.
Bradley, C. S., Groesbeck . . . . . July 8, 1903.
Bradley, Tom C., Bonham . . . . . July 13, 1905.
Brooks, M. M., Dallas . . . . . July 13, 1904.
Brooks, S. J., San Antonio . . . . . July 31, 1905.
Browder, Edw. M., Dallas . . . . . July 2, 1902.
Brown, T. J., Sherman . . . . . July 17, 1882.
Brown, R. L., Austin . . . . . May 5, 1885.
Brown, E. F., Sherman . . . . . July 13, 1905.
Bryan, Beauregard, El Paso . . . . . July 29, 1896.
Bryan, Lewis R., Houston . . . . . July 29, 1891.
Bryan, Chester H., Houston . . . . . July 13, 1904.
Burford, A. L., Mt. Pleasant . . . . . July 13, 1904.
Burgess, R. F., El Paso . . . . . July 29, 1896.
Burgess, Wm. H., El Paso . . . . . July 8, 1903.
Burney, R. H., Kerrville . . . . . July 8, 1903.
Burns, W. T., Houston . . . . . July 30, 1896.
Cage, Elliott, Houston . . . . . July 13, 1904.
Campbell, T. M., Palestine . . . . . July 2, 1902.

Campbell, J. W., Houston.....July 13, 1904.
Campbell, J. R., Sherman.....July 13, 1905.
Cantey, S. B., Fort Worth.....July 27, 1898.
Carpenter, Lewis R., Corsicana.....July 12, 1905.
Carswell, R. E., Decatur.....July 24, 1894.
Carter, C. L., Houston.....July 8, 1903.
Chambers, E. S., Clarksville.....July 12, 1905.
Carter, H. C., San Antonio.....July 25, 1904.
Chambers, C. M., Clarksville.....July 11, 1906.
Chesley, A., Beeville.....December 14, 1883.
Childs, J. D., San Antonio.....July 27, 1898.
Clark, Jno. H., San Antonio.....July 29, 1896.
Clark, V. M., Sulphur Springs.....July 2, 1902.
Clark, Wm. H., Dallas.....July 24, 1886.
Clough, G. J., Galveston.....July 11, 1906.
Cobb, Jos. L., Sherman.....July 13, 1905.
Cochran, T. B., Austin.....July 25, 1894.
Cockrell, Joe E., Dallas.....July 29, 1896.
Coke, Henry C., Dallas.....July 24, 1886.
Coldwell, W. M., El Paso.....July 13, 1904.
Coll, Geo. E., Galveston.....July 31, 1901.
Conally, Tom, Marlin.....July 2, 1902.
Connerly, R. H., Austin.....July 29, 1898.
Connor, H. C., Sulphur Springs.....July 2, 1902.
Connor, E. S., Paris.....July 12, 1905.
Cox, W. E., San Antonio.....July 8, 1903.
Craddock, Jno. T., Greenville.....July 12, 1905.
Crane, M. M., Dallas.....July 24, 1886.
Crawford, M. L., Dallas.....July 24, 1886.
Crawford, M. L., Jr., Dallas.....July 3, 1902.
Crawford, W. L., Dallas.....July 17, 1882.
Crawford, Walter J., Beaumont.....July 2, 1902.
Crisp, J. C., Beeville.....July 27, 1893.
Crook, W. M., Beaumont.....July 8, 1903.
Culberson, Chas. A., Dallas.....July 17, 1882.
Cunningham, A. M., San Antonio.....July 8, 1903.

Dabney, S. B., Houston.....July 11, 1906.
Dannenbaum, H. J., Houston.....July 13, 1904.
Davidson, R. V., Austin.....July 17, 1882.
Davis, A. L., Beaumont.....July 11, 1906.
Davis, M. W., San Antonio.....July 8, 1903.
Davis, L. B., Cleburne.....July 24, 1886.
Dean, A. R., Sherman.....July 12, 1905.
Decker, N. H. L., Denison.....July 12, 1905.
Denman, L. G., San Antonio.....July 25, 1894.
Dillard, F. C., Sherman.....July 12, 1905.
Dinsmore, J. H., Sulphur Springs.....July 2, 1902.
Dorough, R. P., Tyler.....July 11, 1906.
Dodd, Thos. W., Laredo.....July 24, 1886.
Dohoney, A. P., Paris.....July 12, 1905.
Drouilhet, P. A., Galveston.....July 31, 1901.
Duff, F. J., Beaumont.....July 31, 1896.
Duff, R. C., Beaumont.....July 31, 1901.
Duncan, Jno. M., Tyler.....July 29, 1896.
Duncan, Jno. T., La Grange.....July 29, 1897.
Dyer, Jno. L., El Paso.....July 27, 1898.
Eagle, Joe H., Houston.....July 8, 1903.
Eberhart, F. S., Gilmer.....July 2, 1902.
Edwards, Peyton F., El Paso.....July 29, 1896.
Eppstein, L. B., Denison.....July 9, 1903.
Estes, W. L., Texarkana.....July 12, 1905.
Evans, H. G., Bonham.....July 29, 1896.
Evans, W. A., Bonham.....July 12, 1905.
Ewing, Presley K., Houston.....July 11, 1899.
Feagin, J. C., Livingston.....July 13, 1904.
Figures, W. B., Atlanta.....July 11, 1906.
Finley, N. W., Dallas.....July 17, 1882.
Finley, J. W., Sherman.....July 12, 1905.
Fisher, Lewis, Galveston.....July 8, 1903.
Fisher, Sam R., Austin.....July 17, 1882.
Flowers, O. M., San Antonio.....July 9, 1903.
Ford, T. W., Houston.....July 9, 1882.

Ford, T. C., Houston.....July 28, 1898.
Foster, Arthur C., Haskell.....July 26, 1893.
Franklin, Thomas H., San Antonio.....December 25, 1884.
Freeman, S. T., Sherman.....July 12, 1905.
Gafford, B. F., Sherman.....July 12, 1905.
Gaines, R. R., Austin.....July 28, 1897.
Galloway, C. L., Sherman.....July 12, 1905.
Garland, J. E., Texarkana.....July 11, 1906.
Garrett, C. C., Brenham.....July 17, 1882.
Garrett, W. N., San Antonio.....July 13, 1904.
Garwood, H. M., Houston.....July 25, 1894.
Gilbert, J. E., San Antonio.....July 8, 1903.
Gill, W. H., Palestine.....July 26, 1899.
Glass, Hiram, Texarkana.....July 28, 1897.
Goeth, C. A., San Antonio.....July 8, 1903.
Goldsmith, J. D., Cleburne.....July 12, 1905.
Gordon, W. D., Beaumont.....July 11, 1906.
Gossett, M. H., Dallas.....July 3, 1902.
Gray, C. J., Hallettsville.....July 8, 1903.
Gregory, T. W., Austin.....July 11, 1906.
Green, P. H., Hallettsville.....July 8, 1903.
Greenwood, C. F., Hillsboro.....July 3, 1902.
Greer, R. A., Beaumont.....July 27, 1898.
Greiner, J. G., Del Rio.....July 13, 1904.
Gresham, Walter, Galveston.....July 17, 1882.
Grimes, S. F., Cuero.....July 17, 1882.
Guinn, J. D., San Antonio.....July 27, 1898.
Haizlip, J. D., Sherman.....July 13, 1905.
Halbert, J. L., Corsicana.....July 31, 1895.
Hale, Owen P., Paris.....July 12, 1905.
Hamblen, Otis K., Houston.....July 13, 1904.
Hamblen, E. P., Houston.....July 13, 1904.
Haralson, E. M., Houston.....July 13, 1904.
Hare, Silas, Jr., Sherman.....July 13, 1904.
Harris, Edw. F., Galveston.....July 27, 1892.
Harris, Jno. Chas., Houston.....July 29, 1891.

Harris, R. C., Beaumont.....July 13, 1904.
Harris, Theodore, San Antonio.....July 27, 1898.
Hart, R. D., Texarkana.....July 11, 1906.
Harwood, T. F., Gonzales.....December 12, 1882.
Hassell, J. W., Sherman.....July 12, 1905.
Hawkins, E. A., Jr., Galveston.....July 30, 1897.
Hay, W. L., Sherman.....July 12, 1905.
Head, Hayden W., Sherman.....July 13, 1904.
Hefley, W. T., Cameron.....July 17, 1882.
Heilbron, A. E., San Antonio.....July 9, 1903.
Henderson, J. M., Daingerfield.....July 11, 1906.
Henderson, Jno. M., Bryan.....July 10, 1889.
Henderson, T. S., Cameron.....July 17, 1882.
Henry, Jno. L., Dallas.....July 24, 1886.
Hicks, Marshall, San Antonio.....July 8, 1903.
Hicks, Yale, San Antonio.....July 27, 1898.
Hildebrand, Ira P., San Antonio.....July 8, 1903.
Hill, James E., Livingston.....August 6, 1890.
Hill, Sam'l F., Livingston.....July 9, 1903.
Hill, James E., Jr.....July 25, 1894.
Hill, J. W., San Angelo.....July 11, 1906.
Holland, W. M., Dallas.....July 2, 1902.
Holloway, Thomas T., Dallas.....July 2, 1902.
Holt, Jesse F., Sherman.....July 12, 1905.
Horten, Guy P., Sherman.....July 12, 1905.
Houston, A. W., San Antonio.....July 17, 1882.
Houston, Reagan, San Antonio.....July 17, 1882.
Huff, S. P., Vernon.....July 28, 1897.
Hughes, W. E., Dallas.....July 31, 1896.
Hume, Chas. F., Jr., Houston.....July 26, 1899.
Hume, Chas. F., Houston.....July 17, 1882.
Humphrey, T. E., Austin.....July 11, 1906.
Hunt, W. S., Houston.....July 28, 1898.
Hurley, J. A., Texarkana.....July 11, 1906.
Ingram, R. P., San Antonio.....July 8, 1903.
James, Jno. H., San Antonio.....July 25, 1904.

Jester, C. L., Corsicana.....July 29, 1897.
Jones, F. C., Houston.....July 28, 1898.
Jones, J. T., Greenville.....July 2, 1902.
Jones, Nat B., San Antonio.....July 8, 1903.
Jones, Wm. M., Dallas.....July 2, 1902.
Jones, B. L., Sherman.....July 12, 1905.
Jones, S. P., Marshall.....July 11, 1906.
Jordan, H. P., Waco.....July 25, 1900.
Kassel, Charles, Sherman.....July 8, 1903.
Keller, C. A., San Antonio.....July 8, 1903.
Kelley, G. G., Wharton.....July 29, 1896.
Kemp, Wyndham, El Paso.....July 26, 1899.
Key, Scott W., Waco.....July 11, 1906.
Key, Wm. M., Austin.....July 25, 1894.
Keeling, W. A., Groesbeck.....July 11, 1906.
King, John J., Texarkana.....July 12, 1905.
Kittrell, N. G., Houston.....December 25, 1884.
Kirby, A. H., Abilene.....July 11, 1906.
Kittrell, N. G., Jr., Houston.....July 13, 1904.
Kleberg, M. E., Galveston.....July 17, 1882.
Kleberg, Randolph, Austin.....July 17, 1882.
Kleiber, John I., Brownsville.....July 8, 1903.
Knight, R. E. L., Dallas.....July 25, 1894.
Kone, J. S., Denison.....July 12, 1905.
Kopperl, M. O., Galveston.....July 25, 1900.
Kopperl, M. A., Austin.....July 2, 1902.
Krueger, C. G., Bellville.....July 13, 1904.
Lamar, L. Q. C., Dallas.....July 13, 1905.
Lane, Jonathan, Houston.....July 17, 1882.
Lawrence, J. S., Sherman.....July 12, 1905.
Leary, J. S., Sherman.....July 11, 1906.
Leary, D. T., Texarkana.....July 11, 1906.
Lee, Chas. K., Fort Worth.....July 25, 1894.
Lee, Tom J., Galveston.....July 27, 1899.
Leeper, Wadsworth D., Houston.....July 13, 1904.
Lenert, Geo. E., La Grange.....July 13, 1904.

Leonard, H. B., San Antonio.....July 8, 1903.
Lewis, Perry J., San Antonio.....July 31, 1895.
Lewis, Yancey, Dallas.....July 2, 1902.
Levy, R. B., Longview.....July 11, 1906.
Lindsley, Philip, Dallas.....July 31, 1895.
Lipscomb, A. D., Beaumont.....July 28, 1897.
Lightfoot, J. P., Austin.....July 11, 1906.
Lively, Hiram F., Dallas.....July 2, 1902.
Locke, Maurice E., Dallas.....July 2, 1902.
Lockett, J. M., Houston.....July 13, 1904.
Lockett, R. R., Texarkana.....July 11, 1906.
Lockhart, Wm. B., Galveston.....July 30, 1896.
Louis, B. F., Houston.....July 13, 1904.
Love, Thomas B., Dallas.....July 2, 1902.
Lovejoy, John, Houston.....July 17, 1882.
Lovett, R. S., New York.....July 11, 1889.
McBride, L. C., Dallas.....July 2, 1902.
McCampbell, Jno. S., Corpus Christi.....July 17, 1882.
McCormick, A. P., Dallas.....July 29, 1891.
McDonald, D. D., Galveston.....July 31, 1901.
McEachin, J. S., Richmond.....July 28, 1897.
McGrady, J. G., Bonham.....July 12, 1905.
McInnis, V. E., Sherman.....July 12, 1905.
McKie, W. J., Corsicana.....July 29, 1891.
McLaurin, Lauch, Dallas.....July 25, 1900.
McLean, W. P., Fort Worth.....July 24, 1886.
McLendon, J. W., Austin.....July 11, 1906.
McMahon, J. B., Temple.....July 28, 1897.
McNeal, Thos., Lockhart.....May 5, 1885.
McRae, Chas. C., Houston.....July 2, 1902.
Mahaffey, J. Q., Texarkana.....July 11, 1906.
Malevinsky, M. L., Houston.....July 25, 1894.
Mann, Geo. E., Galveston.....July 17, 1882.
Martin, Thomas P., Beaumont.....July 17, 1882.
Masterson, B. T., Galveston.....July 17, 1882.
Masterson, Harris, Houston.....July 13, 1904.

Masterson, Thos. W., Galveston.....July 13, 1904.
Masterson, A. E., Angleton.....July 13, 1904.
Mathis, W. J., Denison.....July 12, 1905.
Maury, R. G., Houston.....July 8, 1903.
Maxey, T. S., Austin.....July 17, 1882.
Mayfield, Allison, Austin.....July 12, 1905.
Miller, Clarence H., Austin.....July 27, 1899.
Miller, Geo. E., Fort Worth.....July 29, 1897.
Miller, T. S., Dallas.....July 24, 1886.
Minor, F. D., Beaumont.....July 17, 1882.
Montrose, T. D., Greenville.....July 10, 1889.
Moody, L. B., Houston.....July 29, 1896.
Moore, L. W., La Grange.....July 2, 1902.
Moore, W. F., Cundiff.....May 5, 1885.
Morgan, Richard, Dallas.....July 17, 1882.
Moroney, W. J., Dallas.....July 3, 1902.
Morrison, W. A., Rockdale.....July 26, 1899.
Morrow, W. C., Hillsboro.....July 26, 1899.
Moseley, A. G., Atoka, I. T.....July 11, 1899.
Mott, M. F., Galveston.....July 17, 1882.
Murphy, Thos. O., San Antonio.....July 8, 1903.
Muse, J. C., Dallas.....July 2, 1902.
Napier, W. P., San Antonio.....July 11, 1906.
Neal, Geo. D., Navasota.....July 26, 1893.
Neathery, Sam, McKinney.....July 13, 1907.
Neblett, R. S., Corsicana.....July 17, 1882.
Neethe, John, Galveston.....July 8, 1903.
Neill, Rob. T., San Antonio.....July 8, 1903.
Nelms, Hayne, Groveton.....July 26, 1899.
Newman, F. M., Brady.....July 31, 1901.
Nichols, J. F., Greenville.....July 31, 1895.
Niday, Jas. E., Houston.....July 13, 1904.
Norton, J. R., San Antonio.....July 27, 1898.
Nunn, D. A., Jr., Crockett.....July 25, 1894.
Oneal, H. F., Atlanta.....July 11, 1906.
O'Brien, Geo. W., Beaumont.....December 14, 1883.

Ogden, Chas. W., San Antonio.....July 8, 1903.
Onion, J. F., San Antonio.....July 27, 1898.
Padelford, S. C., Cleburne.....July 24, 1886.
Park, A. P., Paris.....July 12, 1905.
Parker, Edw. B., Houston.....July 27, 1898.
Parker, John W., Houston.....July 30, 1896.
Parks, W. N., Brownsville.....July 8, 1903.
Parr, J. K., Hillsboro.....July 26, 1899.
Patterson, James, Cooper.....July 2, 1902.
Peareson, D. R., Richmond.....July 28, 1897.
Pearson, J. M., McKinney.....July 8, 1903.
Peeler, John L., Austin.....July 27, 1898.
Pendarvis, G. H., Houston.....July 13, 1904.
Perkins, E. B., Dallas.....July 24, 1886.
Perkins, E. G., Dallas.....July 11, 1906.
Perryman, Sam R., Houston.....July 11, 1889.
Phelps, Ed. S., Houston.....July 13, 1904.
Phillips, Nelson, Dallas.....July 3, 1902.
Pierson, Wm., Greenville.....July 13, 1904.
Pleasants, R. A., Cuero.....July 25, 1900.
Plowman, Geo. H., Dallas.....July 24, 1886.
Pollard, Claude, Austin.....July 11, 1906.
Potter, C. C., Gainesville.....July 2, 1902.
Powell, Geo., San Antonio.....July 8, 1903.
Powell, D. J., San Antonio.....July 8, 1903.
Powell, Ben, Huntsville.....July 11, 1906.
Proctor, F. C., Beaumont.....July 29, 1891.
Proctor, D. C., Cuero.....July 17, 1882.
Rainey, Anson, Dallas.....July 17, 1882.
Randell, C. B., Sherman.....July 12, 1905.
Reese, T. S., Hempstead.....December 14, 1883.
Rice, B. H., Marlin.....July 27, 1898.
Robertson, Jas. M., Meridian.....July 29, 1896.
Robinson, C. W., Houston.....July 13, 1904.
Robinson, J. T., Daingerfield.....July 11, 1906.
Robson, W. S., La Grange.....July 17, 1882.

Rodgers, R. W., Texarkana.....July 11, 1906.
Routledge, Jas., San Antonio.....July 29, 1896.
Rowe, T. C., Houston.....July 13, 1904.
Ruby, Jno. H., Houston.....July 25, 1900.
Russell, Spencer C., Richmond.....July 2, 1902.
Ryan, Jos., San Antonio.....July 9, 1903.
Salliway, H. B., San Antonio.....July 8, 1903.
Saner, R. E. L., Dallas.....July 25, 1900.
Sanford, A. D., Waco.....July 25, 1900.
Sayers, J. D., Austin.....July 17, 1882.
Schwartz, Sam'l, San Antonio.....July 8, 1903.
Scott, Walter H., Houston.....July 13, 1904.
Searcy, W. W., Brenham.....July 17, 1882.
Sears, W. G., Houston.....July 9, 1903.
Seeligson, A. W., San Antonio.....July 8, 1903.
Sehorn, Jno., San Antonio.....July 27, 1898.
Sexton, Richard A., Marshall.....July 11, 1906.
Shearon, Thomas, Dallas.....July 13, 1904.
Shaw, W. N., Houston.....December 14, 1883.
Sheperd, Seth, Washington, D. C.....July 17, 1882.
Sheperd, Jas. L., Colorado.....July 26, 1899.
Shropshire, J. E., Brady.....July 12, 1905.
Simkins, W. S., Austin.....July 17, 1882.
Simmons, D. E., Austin.....July 25, 1900.
Smith, Tilman, Fort Worth.....July 30, 1896.
Smith, W. J. J., Dallas.....July 2, 1902.
Smith, C. H., Sherman.....July 12, 1905.
Smith, R. E., Sherman.....July 13, 1905.
Smelser, S. H., Texarkana.....July 11, 1906.
Sonfield, Leon, Beaumont.....July 25, 1900.
Spearman, Robt. F., Greenville.....July 13, 1905.
Speer, Ocie, Fort Worth.....July 13, 1904.
Spence, Jos. Jr., San Angelo.....July 31, 1895.
Spence, W., Dallas.....July 24, 1886.
Spencer, F. M., Galveston.....July 17, 1882.
Spivey, A. Newt., Atlanta.....July 11, 1906.

Spivey, Jno. W., Marlin.....July 11, 1906.
Spoonts, M. A., Fort Worth.....July 25, 1894.
Spoonts, Marshall, Fort Worth.....July 12, 1905.
Standifer, I. M., Houston.....July 31, 1895.
Steger, Thomas P., Bonham.....July 12, 1905.
Stewart, Jno. S., Houston.....July 29, 1896.
Stewart, Maco, Galveston.....July 25, 1894.
Stinchcomb, T. B., Longview.....July 11, 1906.
Stone, T. H., Houston.....July 28, 1898.
Storey, L. J., Austin.....May 5, 1885.
Street, Robt. G., Galveston.....July 17, 1882.
Streetman, Sam, Houston.....July 28, 1897.
Stubbs, Chas. J., Galveston.....July 25, 1900.
Stubbs, Jas. B., Galveston.....July 17, 1882.
Suggs, J. T., Denison.....July 12, 1905.
Sullivan, J. C., San Antonio.....July 8, 1903.
Swearingen, P. H., San Antonio.....July 8, 1903.
Taliaferro, Sinclair, Houston.....July 17, 1882.
Talbot, J. M., Dallas.....July 11, 1906.
Tarlton, B. D., Austin.....July 17, 1882.
Templeton, Howard, Sulphur Springs.....July 2, 1902.
Terrell, J. M., Daingerfield.....July 11, 1906.
Terrell, J. O., San Antonio.....July 17, 1882.
Terrell, A. W., Austin.....July 17, 1882.
Terry, J. W., Galveston.....July 17, 1882.
Thomas, W. S., Texarkana.....July 11, 1906.
Thompson, J. W., Dallas.....July 2, 1902.
Thompson, Wm., Dallas.....July 29, 1897.
Thompson, Geo., Fort Worth.....July 13, 1905.
Thurmond, P. C., Bonham.....July 12, 1905.
Tod, John J., Houston.....July 11, 1889.
Todd, Chas. S., Texarkana.....July 17, 1882.
Tompkins, Arthur C., Hempstead.....July 10, 1889.
Townes, Jno. C., Austin.....July 29, 1896.
Tucker, Chas. F., Dallas.....July 24, 1886.
Turner, P. A., Texarkana.....July 12, 1905.

Turney, W. W., El Paso.....July 27, 1898.
Upthegrove, Daniel, Dallas.....July 12, 1905.
Vinson, W. A., Sherman.....July 12, 1905.
Waggener, Leslie, Dallas.....July 13, 1905.
Wagstaff, J. M., Abilene.....July 11, 1906.
Walker, Jno. C., Galveston.....July 17, 1882.
Wall, Jno., Sherman.....July 12, 1905.
Ward, R. H., San Antonio.....July 8, 1903.
Wash, F. H., San Antonio.....July 29, 1896.
Watkins, A. B., Athens.....July 2, 1902.
Watkins, Edgar, Houston.....July 31, 1895.
Wear, W. C., Hillsboro.....July 11, 1889.
Webb, G. P., Sherman.....July 13, 1905.
Welch, Stanley, Corpus Christi.....July 25, 1900.
Wharton, C. R., Houston.....July 25, 1900.
Wheeler, J. T., Galveston.....July 11, 1906.
Wilkerson, J. D., Beaumont.....July 13, 1904.
Wilkinson, A. E., Austin.....July 25, 1894.
Williams, Chas. S., Caldwell.....July 25, 1894.
Williams, Eugene, Waco.....July 17, 1882.
Williams, F. A., Austin.....July 25, 1894.
Williams, Mason, San Antonio.....July 8, 1903.
Williams, Wm. D., Fort Worth.....May 5, 1885.
Wilson, J. I., Houston.....July 2, 1902.
Wilson, Wm. H., Houston.....July 28, 1897.
Winter, J. G., Waco.....July 24, 1886.
Wolfe, J. A. L., Sherman.....July 12, 1905.
Wood, J. H., Sherman.....July 27, 1898.
Wood, Houston, Dallas.....July 11, 1906.
Wozencraft, A. P., Dallas.....July 29, 1896.
Wren, Clark C., Houston.....July 13, 1904.
Young, Jno. L., Dallas.....July 28, 1897.
Young, J. L., Cooper.....July 12, 1905.

HONORARY MEMBERS.

Brewer, David J.....Washington, D. C.
Howe, William Wirt.....New Orleans, La.
Spencer, Selden P.....St. Louis, Mo.

NEW MEMBERS.

(Enrolled at the Beaumont Meeting, July 2, 1907.)

Calhoun, A. L. ..... Beaumont.
Long, S. B. M. ..... Paris.
Bruce, E. L. ..... Orange.
Whitaker, H. M. ..... Beaumont.
Taub, Otto ..... Houston.
Mathis, L. H. ..... Wichita Falls.
Garrison, John T. ..... Nacogdoches.
Glasscock, D. W. ..... Beaumont.
Harrison, Jas. A. ..... Beaumont.
Graves, Geo. W. ..... Houston.
Hefner, R. A. ..... Beaumont.
Little, Jno. C. ..... Kountze.
Lovingberg, I., Jr. ..... Galveston.
Nall, W. H. ..... Kountze.
Cooper, S. B., Sr. ..... Beaumont.
Cooper, S. B., Jr. ..... Beaumont
Perkins, J. I. ..... Rusk.
Conley, John M. ..... Beaumont.
Teagle, C. A. ..... Beaumont.
O'Fiel, John J. ..... Beaumont.
Scurlock, Marvin ..... Beaumont.
Dabney, J. F. ..... Liberty.
Walter, C. K. ..... Gonzales.
Williams, Joe ..... Port Arthur.
McDowell, E. A. ..... Beaumont.
Lord, C. A. ..... Beaumont.
Kelly, W. F. ..... Galveston.
Townes, E. E. ..... Beaumont.
Nall, E. L. ..... Beaumont.

Wheat, D. P.....Beaumont.
Mackey, John W.....Beaumont.
Smith, Stuart R.....Beaumont.
Anderson, Geo. D.....Beaumont.
Daugherty, G. P.....Beaumont.
Fleming, J. V.....Beaumont.
John, Robt. A.....Beaumont.
Todd, O. J.....Beaumont.
Robertson, H. G.....Beaumont.
Howth, C. W.....Beaumont.
Parker, O. S.....Beaumont.
Barry, H. P.....Beaumont.
Goodrich, W. F.....Hemphill.
Colgin, E. B.....Houston.
Davenport, J. R.....Beaumont.
Smithdeal, C. M.....Hillsboro.
Meador, R. T.....Dallas.
Blount, S. W.....Nacogdoches.
Greer, Geo. C.....Beaumont.
Miller, W. E.....Beaumont.
Picket, E. B., Jr.....Liberty.
Collins, V. A.....Beaumont.
Martin, Carlisle B.....Beaumont.
Dowlin, P. A.....Beaumont.
Easterling, E. E.....Beaumont.
Hardy, D. H.....Beaumont.
Duffy, M. S.....Beaumont.
McLaurin, John F.....Brookeland.
Bisland, J. B.....Orange.
Lowry, M. W.....Beaumont.
Skinner, S. P.....Ellis county.
Moore, R. E.....Jefferson county.
Dies, W. W.....Kountze.
Gordon, Sol E.....Beaumont.

TEXAS BAR ASSOCIATION.

CONSTITUTION.

ARTICLE I.

NAME AND OBJECT OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members.

ARTICLE II.

MEMBERSHIP.

SECTION 1. Any attorney of the Texar Bar, in honorable standing, upon his written application, may be entitled to membership at any regular meeting of the Association. Said application must be endorsed by three members of the Association, and a fee of $5.00 shall accompany the same—$2.50 initiation fee and $2.50 annual dues.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association, and if said report be favorable a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected.

ARTICLE III.

OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers, and the President and Vice-President shall be *ex officio* members of the Board.

SEC. 3. The officers and Directors shall hold their offices for one year and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.

SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolutions of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

ARTICLE IV.

COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Criminal Law and Criminal Procedure; on Commercial Law; on Publication; on Grievances and Discipline.

SEC. 2. A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

ARTICLE V.

GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees, and establish by-laws for its government. It shall have power to remove officers and suspend or expel members for good cause, upon written charges exhibited against them by a member, and due notice given of the charges and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessment to be levied on the members for the support of the Association and the promotion of its objects.

ARTICLE VI.

QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

ARTICLE VII.

ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

ARTICLE VIII.

MEETINGS.

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

ARTICLE IX.

AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of the members present.

ARTICLE X.

DUES.

SECTION 1. Each member of the Association shall pay to the Secretary the sum of $2.50 as annual dues.

BY-LAWS.

ARTICLE I.

PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a President *pro tem.* shall be chosen by and from the attending members.

ARTICLE II.

ADDRESS AND ESSAYS.

SECTION 1. The Board of Directors, at its first meeting after each annual meeting shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

ARTICLE III.

ANNUAL MEETING AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meeting shall be as follows:

1. Opening address of the President.
2. Nomination and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of Secretary and Treasurer.
6. Reports of Standing Committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline.
7. Reports of special committees.
8. Nomination of officers.
9. Miscellaneous business.
10. Election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

SEC. 2. This order of business may be changed at any meeting by a vote of a majority of the members present; and, except otherwise provided by the Constitution or By-Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no

other address made or paper read or presented shall be printed except by order of the Committee on Publication.

SEC. 7. The Board of Directors shall, as soon as parties have been selected to deliver the annual address and read essays, notify the Secretary of this Association of such selections, and of any other matters of especial interest to be brought before the next annual meeting.

SEC. 8. The Secretary shall be and is hereby required to mail each member of the Association, ten days before each annual meeting, a written or printed notice of the time and place of such meeting, giving a statement of the addresses to be delivered, the papers to be read, and other matters of especial interest, and shall also cause such notice to be published.

ARTICLE IV.

MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be $5.00, which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting, in advance, and should any member neglect to pay them for one year at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

ARTICLE V.

OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at adjournment thereof, except the Board of Directors, whose terms of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the person appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hours as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committees present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

SEC. 6a. It shall be the duty of the President to use every possible means to ascertain the death of any member of the Association, and, when such death is ascertained, it shall be his duty to seek for a personal friend of the deceased who would be a proper committeeman and to add such friend to the Committee on Deceased Members.

It shall further be the duty of the President to draft bills upon all measures which are unanimously recommended by the Association, and to present such bills to the Legislature for enactment into laws; and the President, in his Annual Address, shall report to the Association how he has fulfilled this obligation.

ARTICLE VI.

SECTION 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical working of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation and experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of the Association. All complaints against any member of this Association shall be presented to this

committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association; all of which the complainant shall also be notified by the committee.

ARTICLE VII.

RESOLUTIONS.

SECTION 1. No resolutions complimentary to any officer or member, for any service performed, paper read or address delivered, shall be considered by this Association.

ARTICLE VIII.

AMENDMENTS.

SECTION 1. These By-Laws may be amended at any meeting of the Association by a vote of two-thirds of those present; provided, that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

TEXAS BAR ASSOCIATION.

PRESIDENTS OF THE ASSOCIATION.

Thomas J. Devine, San Antonio, 1882; T. N. Waul, Galveston, 1882-3; J. H. McLeary, San Antonio, 1883-4; B. H. Bassett, Brenham, 1884-5; A. J. Peeler, Austin, 1885-6; T. J. Beall, El Paso, 1886-7; W. L. Crawford, Dallas, 1887-8; F. Charles Hume, Galveston, 1888-9; H. W. Lightfoot, Paris, 1889-90; Norman G. Kittrell, Houston, 1890-1; Seth Shepard, Dallas, 1891-2; John N. Henderson, Bryan, 1892-3; S. C. Padelford, Cleburne, 1893-4; Thomas H. Franklin, San Antonio, 1894-5; William L. Prather, Waco, 1895-6; William H. Clark, Dallas, 1896-7; William Aubrey, San Antonio, 1897-8; Frank C. Dillard, Sherman, 1898-9; Presley K. Ewing, Houston, 1899-1900; M. A. Spoonts, Forth Worth, 1900-01; James B. Stubbs, Galveston, 1901-2; Lewis R. Bryan, Houston, 1902-03; T. S. Reese, Hempstead, 1903-04; H. C. Carter, San Antonio, 1904-05; H. M. Garwood, Houston, 1905-06; A. L. Beaty, Sherman, 1906-07; A. E. Wilkinson, Austin, 1907-08.

ANNUAL ADDRESSES.

1883—Mr. Richard S. Walker, of Austin, "The Bench and Bar in the Early Days of Texas."

1884—Mr. B. H. Bassett, of Brenham, "The Lawyer as a Citizen."

1886—Mr. Sawnie Robertson, of Dallas, "The Death of Chancery."

1887—Mr. C. C. Garrett, of Brenham, "Conflict Between State and Federal Courts as to Jurisdiction of the Former Over Non-residents."

1888—Mr. F. Charles Hume, of Galveston, "Execution Process; Should the Legislature Extend It?"

1889—Mr. S. B. Maxey, of Paris, "The Federal Constitution."

1893—Mr. Thomas H. Franklin, of San Antonio, "Judicial Centralization."

1894—Mr. B. D. Tarlton, of Fort Worth, "Some Reflections on the Relations of Capital and Labor."

1895—Mr. O. M. Roberts, of Austin, "The Right and Duty of Coinage by the United States."

1896—Mr. Seymour D. Thompson, of Missouri, "Government by Lawyers."

1897—Mr. N. W. Finley, of Dallas, "Trusts, Combinations and Conspiracies in Restraint of Trade."

1898—Mr. Sam J. Hunter, of Fort Worth, "Life Tenures of Office in a Republican Government."

1899—Mr. F. Charles Hume, of Galveston, "The Supreme Court of the United States."

1900—Mr. William Wirt Howe, of New Orleans, "Roman and Civil Law in the Three Americas."

1904—Mr. Robert G. Street, of Galveston, "Sovereignty."

1905—Mr. T. J. Brown, of Sherman, "Our State Judiciary."

1906—Justice David J. Brewer, "Two Periods in the History of the Supreme Court."

1907—Hon. Yancey Lewis, "Institutional Changes."

PAPERS READ.

1883—Mr. A. J. Peeler, of Austin, "Rights of Land Owners in Texas to Protection Against Governmental and Individual Aggression in the Use and Enjoyment of Their Property."

1883—Mr. Robert G. Street, of Galveston, "Texas Pleadings."

1884—Mr. O. M. Roberts, of Austin, "Legal Education and Admission to the Bar."

1889—Mr. O. M. Roberts, of Austin, "Law and Pleading."

1890—Mr. B. H. Bassett, of Dallas, "The Model Brief."

1891—Mr. J. M. Avery, of Dallas, "Liability of an Organizer of a Corporation for Its Acts."

1892—Mr. C. C. Garrett, of Brenham, "Limitation of Actions When There is a Trustee Authorized to Sue."

1892—Mr. S. C. Padelford, of Cleburne, "Government."

1893—Mr. H. Teichmueller, of La Grange, "The Homestead Law."

1893—Mr. T. S. Reese, of Hempstead, "Criminal Law."

1893—Mr. John G. Winter, of Waco, "Community Law."

1893—Mr. Richard Morgan, of Dallas, "Receiverships."

1893—Mr. James C. Scott, of Fort Worth, "Private Corporations."

1894—Mr. E. B. Perkins, of Greenville, "The Statutory Craze."

1894—Mr. Robert G. Street, of Galveston, "Medical Jurisprudence."

1894—Mr. Edwin Hobby, of Houston, "The Legal Profession; Its Value, Importance and Influence."

1894—Mr. Charles S. Todd, of Texarkana, "Assignments for the Benefit of Creditors."

1894—Mr. Norman G. Kittrell, of Houston, "The Criminal Law of Texas and Its Administration."

1894—Mr. T. H. Conner, of Eastland, "Juries and Jury Trials."

1894—Mr. T. F. Harwood, of Gonzales, "The Respect Due by Members of the Bar to the Judiciary."

1895—Mr. George W. Davis, of Dallas, "Texas Pleadings."

1895—Mr. Wm. H. Clark, of Dallas, "Deeds of Trust Preferring Creditors."

1895—Mr. John G. Tod, of Houston, "Administration of Community Property by the Survivor."

1895—Mr. R. L. Batts, of the University of Texas, "Some Reflections Concerning Legal Education."

1896—Mr. E. J. Simkins, of Dallas, "Proper Subjects of Legislation."

1896—Mr. F. W. Ball, of Fort Worth, "A Desultory Denunciation of Texas Law and Procedure."

1896—Mr. H. Teichmueller, of La Grange, "Judge and Jury."

1896—Mr. A. E. Wilkinson, of Denison, "A Review of Some Recent Noteworthy Decisions by the Higher Courts of Texas."

1896—Mr. John Dowell, of Austin, "The Symbolism of Commerce—Trade Mark."

1897—Mr. Leroy G. Denman, of San Antonio, "Our Present Judicial System: Its Advantages and Defects."

1897—Mr. Joseph Spence, Jr., of San Angelo, "A Review of Recent Noteworthy Decisions of the Higher Courts of Texas."

1897—Mr. M. A. Spoonts, of Fort Worth, "A Divided Allegiance."

1897—Mr. Presley K. Ewing, of Houston, "The De Facto Wife."

1897—Mr. Wm. Aubrey, of San Antonio, "Mob Law."

1897—Mr. B. R. Webb, of Fort Worth, "Some Needed Reforms in Our Real Estate Laws."

1898—Mr. Norman G. Kittrell, of Houston, "Needed Reforms in the Assessment and Collection of Taxes."

1898—Mr. George E. Miller, of Wichita Falls, "Some Features of the Uniform Bankruptcy Law."

1898—Mr. Jonathan Lane, of La Grange, "Our Courts."

1898—Mr. W. A. Kincaid, of Galveston, "In the Known Certainty of the Law is the Safety of All."

1898—Mr. B. R. Webb, of Fort Worth, "A Review of Recent Noteworthy Decisions of the Higher Courts of Texas."

1899—Mr. T. S. Reese, of Houston, "A Plea for Exactness and Certainty of the Law."

1899—Mr. Edward F. Harris, of Galveston, "Some Recent Noteworthy Decisions in Civil Cases by the Higher Courts of Texas."

1899—Mr. W. C. Wear, of Hillsboro, "Admission to the Bar."

1899—Mr. Philip Lindsley, "Humorous Report of Annual Meeting of the Tennessee State Bar Association."

1900—Mr. J. B. Dibrell, of Seguin, "The Legislative Function."

1900—Mr. J. A. Holland, of Orange, "The White Man's Burden, from a Legal Standpoint."

1900—Mr. A. E. Wilkinson, of Austin, "Law and Literature."

1900—Mr. Edwin B. Parker, of Houston, "Anti-Railroad Personal Injury Litigation in Texas."

1901—Mr. John G. Tod, of Houston, "Recent Noteworthy Decisions of the Texas Courts."

1901—Mr. Norman G. Kittrell, of Houston, "The Barker Case."

1902—Mr. Maco Stewart, of Galveston, "The Story of a Land Title."

1902—Mr. John Charles Harris, of Houston, "Trial by Jury in Civil Causes."

1902—Mr. Yancey Lewis, of the University of Texas, "The Rights of Riparian Owners in the Matter of Irrigation."

1903—Mr. Jno. N. Henderson, of Bryan, "The Pardoning Power, Its Uses and Abuses."

1903—Mr. Jno. C. Townes, of Austin, "Courses of Study in Law Pursued in the State University."

1903—Mr. Jno. C. Walker, of Galveston, "Some Peculiarities of the Admiralty Law."

1903—Mr. Wm. D. Williams, of Fort Worth, "The Taxation of Intangibles."

1903—Mr. C. F. Greenwood, of Hillsboro, "Will Injunction Lie to Restrain the Local Option Law from Going Into Effect?"

1903—Mr. S. J. Brooks, of San Antonio, "The Increase of Litigation in Cities and Some Suggested Amendments to the Practice Act."

1904—Mr. Chas. K. Bell, of Fort Worth, "Certain Needed Reforms."

1904—Mr. Edward F. Harris, of Galveston, "Review of Recent Noteworthy Decisions."

1904—Mr. Alfred E. Wilkinson, of Austin, "The Legal Mind."

1904—Mr. A. L. Beaty, of Sherman, "Impeaching the Verdict of the Jury."

1904—Mr. Jno. C. Walker, of Galveston, "The Harter Act."

1904—Mr. W. M. Caldwell, of El Paso, "Growth of Central Power in the United States."

1904—Mr. Clarence H. Miller, of Austin, "Our Lawmakers, the Judges."

1904—Mr. Ocie Speer, of Bowie, "The 'Texas Rule' in Irrigation."

1904—Mr. Thomas Sherman, of Dallas, "The Vendor's Lien in Texas; An Historical Essay."

1904—Mr. Lewis Fisher, of Galveston, "Needed Amendments of Probate Law."

1905—Mr. W. J. Moroney, of Dallas, "How to Reform Our Civil Procedure."

1905—Mr. H. M. Gossett, of Kaufman, "Alien and Corporate Ownership of Land in Texas."

1905—Mr. B. R. Webb, of Fort Worth, "C. O. D. Sales of Intoxicating Liquors."

1905—Mr. Wm. H. Burgess, of El Paso, "A Comparative Study of the Constitution of the United States of Mexico and the United States of America."

1905—Mr. Nelson Phillips, of Dallas, "A Great English Lawyer."

1905—Mr. B. D. Tarlton, of Austin, "The Texas Homestead Exemption."

1905—Mr. Jno. N. Henderson, of Bryan, "The Old Court of Criminal Appeals and Its Work."

1906—Mr. U. M. Rose, of Little Rock, "The Code Napoleon."

1906—Mr. R. G. Street, of Galveston, "Evolution of Law."

1906—Mr. Jordan F. Sellers, of Morrilton, Ark., "Trade Monopolies and Their Legal Restraint."

1906—Mr. Sheldon P. Spencer, of St. Louis, "Lawlessness and Lawyers."

1906—Mr. Lewis Rhoton, of Little Rock, Ark., "The Law of Bribery."

1906—Mr. T. W. Gregory, of Austin, "The Origin and Growth of the Ku Klux Klan."

1906—Mr. Sam B. Dabney, of Houston, "A Criticism of the Organization of Our Courts and a Theory for Their Reorganization."

1906—Mr. Wm. B. Smith, of Little Rock, Ark., "Bills of Lading as Collateral Security."

1907—Mr. Edgar Watkins, of Houston, "Should the Legal Status of the Negro Be Changed?"

1907—Mr. W. M. Holland, of Dallas, "Liability of Trusts for Private Wrongs."

1907—Mr. John Chas. Harris, of Houston, "Legal Ethics."

1907—Mr. Robert A. John, of Beaumont, "Uniform Legislation."

1907—Mr. Thomas H. Franklin, of San Antonio, "The Honor of the Bar."

APPENDIX.

PRESIDENT'S ANNUAL ADDRESS

DELIVERED BEFORE THE

TEXAS BAR ASSOCIATION

BY

HON. A. L. BEATY,
OF SHERMAN, TEXAS,
PRESIDENT OF THE ASSOCIATION.

Gentlemen of the Texas Bar Association:

Earlier than the common or the civil law was the custom to give appropriate notice of that which was ordained for the public weal. It did not take the perfection of human wisdom to see error in exacting obedience to something of which the subject or citizen had no knowledge or fair means of knowledge. While ignorance of law excused no man, law meant rules enacted and published. It would appear more unjust to enforce a statute of which the governed is ignorant than to execute without a hearing. And when it was said in derision:

> "I oft have heard of Lydford law
> Where in the morn they hang and draw
> —— And sit in judgment after."

The bard did not have in mind the custom that now prevails in the good commonwealth of Texas, for we print the statute "after." Very drastic enactments have recently gone into effect, and others will become effective within the next ten days, and yet they have not been published and may not be seen in official print for probably sixty days to come. The expense of obtaining copies or making pilgrimages to Austin is too great for the average citizen and, still, nothing less is safe. The press has done its part, but the

people are in the dark and the bar is not in much gladsome light. A provision of the Constitution of this Association requires the President to open each annual meeting with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice. And, although the full and efficient performance of that duty would not meet the emergency, an effort in that direction may be of some help and at least prepare the mind for what is coming, or, rather, for a knowledge of what has come.

INSURANCE COMPANIES.

The Robertson bill, which becomes a law, requires all stock or mutual life insurance companies, as a condition to their right to transact business in this State, to invest and keep invested in Texas securities, which are defined, or in office buildings in Texas cities of 25,000 people or more, at least 75 per cent of the legal reserve belonging to policies written on the lives of citizens of this State; provided, that, upon a showing to the Commissioner of Insurance that such an investment would be unsafe, permission may be had to invest in bonds of the United States or of any State of the Union; and provided, also, that the Commissioner may waive the requirements of the act in toto when a company makes a sufficient showing, of which the Commissioner is to be the judge, that it can not obtain the securities mentioned. When the securities are purchased they must be deposited in the State Treasury or within the State in some State or Federal depository, and be subject to the payment of Texas policies. Provision is made for changes and substitutions from time to time and for the collection of income and the making of reports—the working details of the law.

Texas has been a rich field for life insurance companies. She has never regulated the subject of forfeitures for non-payment of premiums or eliminated suicide as a defense when there was no suicidal intent at the time a policy was obtained, as many States have done; but, while her citizens were paying the same premium rates as paid in other States where such regulations exist, she has left the insurers virtually free to make such contracts as they might choose—and they have not failed to choose. One of the largest companies for years classified its policy holders. It had a Southern class, which included Texans. Owing to an excessive death rate, or some other cause, the dividends in excess of the fixed reserve for this class were not more than half what they were in other

States. The company, after abolishing the classification, compiled tables and made estimates purporting to be based on past experience and sent forth its agents to solicit tontine business on the faith of those estimates. They were in fact based on results had in the most favored sections and did not include the experience of the Southern class. But they were used in Texas. Other similar frauds have been practiced. And policy holders here, in common with those of other sections, have endured outright misappropriation of their funds—larcenies that would have shocked a pirate of the Spanish main. To such causes this legislation is due. It is not astonishing. Moreover, it is difficult to see anything but justice in it. However, that which is just is not always expedient, and the present injury may be so great as to overcome the prospect of future gain. The evident purpose of the law is the bringing in for the security of policy holders and the purposes of taxation a large amount of property which morally belongs here. But it may be that on account of complications in management and difficulties growing out of charter provisions, some companies organized under the laws of other States can not comply with its terms and this may deprive us of large investments of capital, which means financial disturbance and injury.

The attitude of the companies is not unreasonable, for it is going a long way to say that they must put a fixed part of their property here and take the consequences of future legislation while they are at the same time responsible to other sovereignties. No individual would care to carry on a business of any kind in a distant State under such circumstances, and it might have been anticipated that they would decline. If they are not paying enough taxes, the Legislature could have come directly to the point and increased them. That certainly would have been better. The State, as such, is not directly interested in the policy contracts; the citizenship would seem sufficiently educated now to take fairly good care of itself in deciding on questions of solvency, especially in view of the sharp rivalry between the companies; and it is known that the rights of all policy holders are safeguarded in the home States of the different companies. Under the circumstances, was it not a mistake to enact such a radical law? Mistakes in that direction hurt, and it takes a long time to live them down.

Another act provides that if any insurance company, organized under the laws of any other State or country, after having obtained authority to do business in this State, shall remove to the Federal court or bring in the Federal court a suit with any citizen of this State, the Commissioner of Insurance shall forthwith revoke its

certificate of authority and shall issue no renewal for a space of three years, and in the meantime such company is prohibited, on that ground alone, from transacting business in this State. This may be valid, but it would appear far from being wise or just. Moreover, it is an unwarranted reflection on the Federal courts.

REVENUES AND TAXATION.

Owners of all kinds of taxable property henceforth are required by statute to render it at its full value; the law taxing intangible assets has been changed so as to apply only to incorporated railroad companies and ferry, bridge, turnpike or toll companies doing business wholly or in part in this State, and to individuals, companies, corporations or associations doing business of the same character in this State; the State tax on gross receipts has been increased in several instances, and a number of subjects added to the Act of 1905, so that, under the new law, those operating interurban or street railways; wholesale dealers or distributors of liquor; wholesale or retail dealers in pistols; terminal companies, fire, marine, accident, casualty, credit, title, live stock, and other kinds of insurance companies, except life; and all life insurance companies, except fraternal and domestic benefit, must pay on their gross receipts. Life insurance companies complying with the Robertson act, or investing as much as one-fourth of their entire assets in Texas, are required to pay only 1 per cent, whereas it otherwise would be 3 per cent, and those investing as much as one-half, pay half of 1 per cent. Charter franchise and liquor taxes generally have been increased, and provision has been made for taxing the rolling stock of railroads, requiring sworn statements to the Comptroller, and contemplating hearings and equalization. As a yet further source of revenue to the State, all property passing by inheritance, will or gift at the owner's death, with certain exceptions, is made subject to an inheritance tax, except when it passes to or for the use of father, mother, husband, wife, or direct lineal descendants of the owner, or to a charitable or educational institution within this State, to be used in the State, the tax gradually increasing in percentage with the amount of property. And then the Governor, Comptroller and Treasurer are constituted a board to calculate the ad valorem rate each year for State purposes. They are required to use prescribed methods which are supposed to insure an automatic rate and effect the collection of no more ad valorem taxes than necessary to finish payment of the State's expenses. A noticeable fact is the effort of the State to reach the

powerful aggregations of capital in interstate business. It is contended on the one hand that they have been evading taxation, while on the other it is said that the demands of the State are unreasonable. Other States are pursuing similar policies, and it is about to become a race. In the meantime, many of those on the defensive are looking to Congress, and it would not be surprising if it should eventually undertake, by virtue of the commerce or post roads clause of the Constitution, to supervise and regulate at least some of those concerned and thereby supersede the powers of the State.

For the provisions that have been mentioned there was probably necessity and occasion, but let us sincerely hope that the day will soon come when it will not be necessary to overhaul the entire tax system every time the Legislature meets.

FREE PASSES.

Favorable response has been made to the righteous public demand for a law against free passes. It is made unlawful for the owner, lessee, receiver or other person operating a steam or electric railway, interurban or street railway, express or sleeping car business, or telegraph or telephone line, to knowingly transport any person or property or transmit any message free of charge, or to grant a free pass, frank or privilege, or a substitute therefor, which is used or can be used instead of the regular fare, or to perform a service except for money and at the regular rate of pay, save that in cases under the jurisdiction of the Railroad Commission, special rates may be authorized. Services may be performed without pay in the course of the proprietor's own business and in the transportation of employes, in which class come, among others, general attorneys and attorneys who appear in courts of record and try cases and who receive reasonable annual salaries; and free transportation may be given to ex-employes, within four months after discharge, when they are looking for employment; to persons actually engaged on sleeping and express cars; telegraph and telephone linemen; post-office inspectors; chairmen and members of grievance committees; customs and immigration agents; State Health Officer and one assistant; Federal health officers; persons in charge of live stock, poultry, fruit, melons and perishable freight; and passes may be given indigent poor, persons injured in wrecks, physicians and nurses caring for them; persons and property in cases of epidemic, pestilence or calamitous visitations; State rangers; sheriffs and other bona fide elective peace officers; live stock sanitary commis-

sioners; and articles sent to orphans' homes and other charitable institutions may be carried free, and ministers of the gospel at half fare. In no instance may a pass be used to carry a person to a political convention or on a political errand. If a road grants one sheriff a pass it must do the same with every other sheriff in the State who makes written application, and sheriffs and other officers having passes must deduct the money value of their passes at the required rate per mile from any mileage accounts against the State or litigants when such pass was used or could have been used. Various severe penalties for violation of the provisions of this law are prescribed, and the one who unlawfully uses or offers to use a pass is not exempt. There may be a few worthy classes omitted from the exceptions, but probably the most serious objection that has been urged against this law is directed at the inhibition against accepting pay other than in money, it being claimed that this infringes on the liberty of contract. There would seem to be something in the point. But if the gap is ever let down here there will be many to enter.

DISCRIMINATION AGAINST EMPLOYES.

Another new law is considered worthy of special notice, not because of its intrinsic importance, but because of that which it portends. It undertakes to define and punish discrimination against persons seeking employment. By its terms an offense is committed when any corporation or receiver of a corporation doing business in this State shall (1) prevent or attempt to prevent a former employe from obtaining employment with another except by truthfully stating in writing on the request of such former employe the reason why he was discharged or quit, (2) communicate any information in regard to a person seeking employment and then refuse to disclose to the latter the particulars thereof, (3) refuse to give a discharged employe a true statement of the cause of his discharge, (4) refuse to give one applying for employment the particulars of any communication received concerning him, (5) after refusing to give a discharged employe a true statement of the cause of his discharge give another a statement in reference thereto except at the request of the discharged employe, (6) discriminate against one seeking employment because he has participated in a strike against another corporation or (7) give information in regard to one having participated in a strike unless such striker violated the law in the course of the strike.

It will be observed that two merchants might carry on the same

kind of business, different in no particular, save that one was incorporated, and one would be subject to the law and the other exempt. Also that a trainman might negligently wreck a train or a dozen trains and kill scores of people and be a thief besides, and the company that had discharged him, or whose service he had quit, would not be free to tell the truth, the whole truth, and nothing but the truth, and that for the public good, except at the villain's request—written request. Likewise that the criminal who organized an unjustifiable strike on another road and led a riot of bomb and blood, could not be discriminated against; if he had committed a crime that fact might be disclosed under proper restrictions, but there could be no discrimination.

A conservative law against blacklisting, prescribing fines and penalties for those things for which actual damages were already recoverable, no doubt would have been wise and constitutional, but it is undreamable that this so-called law can ever be approved by an intelligent citizenship or allowed to stand when it reaches those mainstays of constitutional government—the courts. It is a humiliating thought that those authorized to speak for labor should advocate such a measure and more humiliating to reflect that our chosen officers, most of them lawyers, have said: "Let it be the law."

PRIVATE CORPORATIONS.

There has been a great change and improvement in the law of corporations. One of the recent acts requires that all of the authorized capital stock shall be subscribed in good faith and 50 per cent paid in cash or its equivalent in property or labor, and this fact shown by the affidavit of the incorporators before the charter of a corporation created for profit, barring certain exceptions, can be filed. The affidavit must also show (1) the name and address of each subscriber; (2) the amount subscribed and paid by each; (3) the cash value of any property received, with description, location and from whom, and the price at which it was received. The Secretary of State is not bound to take the affidavit, but may require further evidence. Within two years the balance of the capital stock must be paid in and this shown in the same manner or the Secretary of State will forfeit the charter by noting on his ledger the word "forfeited," giving the date and reason therefor. Upon such a forfeiture being thus entered, the corporation is notified by mail and has six months in which to comply with the law and be revived. If it does not do so, it is wound up as on dissolution. Stockholders have the privilege, for

the two years from the filing of the charter, to reduce the capitalization so as to obtain fully paid up stock for the amount paid in, but no creditor is to be injured. It takes a two-thirds vote of all the stock to increase the capital of a corporation, and when an increase is made the same rule in reference to subscription and payment and proof thereof and subsequent forfeiture applies. The capital stock may be decreased by a like vote, the Secretary of State supervising and seeing that all debts are paid or secure, and even then a decrease does not prejudice the rights of creditors. Instead of three modes of dissolution, (1) by expiration of the charter, (2) by judicial decree and (3) by failure to commence operations within three years, as heretofore, there are, under the new law, the same and three others, viz.: (4) by the written consent of all the stockholders or the written vote for four-fifths in a meeting called for the purpose, (5) by forfeiture of the charter under any special provision of law without judicial ascertainment, and (6) when judicially ascertained to be insolvent. After dissolution the existence of a corporation may be deemed to continue for three years to enable its officers, who hold over as trustees, to wind up its affairs, and where a receiver is appointed it may be still further prolonged. All corporations, foreign and domestic, under penalty of forfeiting their charters or permits, are prohibited from directly or indirectly contributing anything to any political campaign or for any political purpose.

The substance of the foregoing was all embraced in one bill. By another act there are added several purposes and combinations of purposes for which incorporation is allowed. And by a third the important subject of insolvent corporations is regulated. It is provided that the Attorney General, or any district attorney or county attorney at his request, when convinced that an insolvent corporation, foreign or domestic, is doing business in this State, shall bring action to forfeit its charter or permit, and that the court may appoint a receiver to wind up its business. It further provides that where watered stock or bonds have been issued the Attorney General shall bring suit to have them canceled. A suit of either character shall be dismissed if the debt is paid or reduced so as to relieve the insolvency, or the stocks and bonds are surrendered for destruction with proper releases. It is further provided that 25 per cent of the stockholders or the owners of 25 per cent of the debts of a corporation may prosecute a suit for its dissolution, and they, of course, could likewise maintain an application for a receiver. In order to protect against the calamities incident to

unfounded suits of this kind, when made public, it is provided that before any suit, on the grounds stated, is filed, leave must be obtained from the judge of the court and he may look into the facts before granting leave, and he shall only grant leave when it is made to appear reasonably certain that the plaintiff is entitled to relief. The defendant must have ten days notice of an application for a receiver.

It will be seen that new rules of practice have been injected.

TRUSTS AND MONOPOLIES.

An act was passed giving the State a lien for the amount of any fines and penalties due it upon the assets within its borders of any corporation violating the anti-trust laws of the State, making the pendency of a suit for the amount notice of the lien, and providing that such suits shall not abate upon the forfeiture of the charter or cancellation of the permit of such corporation, but that, in such event, a receiver shall be appointed—and this law is said to be in operation now. Another requires corporations transacting business here to permit the Attorney General and his assistants and representatives to make examination of their books and records and take copies ad libitum, to the end that it may be ascertained whether they violate the law, but requires that information thus obtained shall not be made public or used except in a judicial proceeding to which the State is a party, having for its object the forfeiture of the charter or the cancellation of the permit or the collection of penalties of such corporation, or for the information of the officers of the State. For refusal to comply with these provisions, heavy fines and jail sentences are denounced against corporate officers and agents, and charters or permits may be canceled. A further enactment provides for proceedings before county judges and justices of the peace to inquire into rumors of violations of the anti-trust laws, while another undertakes to compel the attendance and testimony of witnesses, exempting them from prosecution in certain cases where they testify without reserve, and a yet further act requires foreign corporations, when sued, to bring their books and records, if demanded, or suffer the consequence of a judgment in favor of the State, it being somewhat similar to the statute upheld by the Supreme Court of Arkansas in Hammond Packing Company vs. State, 100 S. W. Rep., 407.

These, together with the one mentioned elsewhere, making it a felony to be a party to a monopoly or conspiracy in restraint of trade, are the new anti-trust laws. They speak for themselves.

RAILROAD REGULATIONS.

Railroads are required to have enough rolling stock to handle their business. Locomotive engines, except switch engines, must be equipped with electric headlights of at least 1500 candle power; trains must be run with full crews; dispatchers, levermen and operators, except at stations with one operator, shall not be kept on duty more than eight hours in twenty-four, with an addition of two hours in cases of emergency; and it is unlawful for any corporation or receiver operating a line of railway in whole or in part in this State to require or knowingly permit any conductor, engineer, fireman, brakeman or telegraph operator who has been on duty for fourteen consecutive hours to perform any work or again go on duty until he has had at least eight hours off duty, except in certain specified emergencies. So said the Legislature by the passage of bills carrying heavy fines and penalties. These new regulations are considered noteworthy because especially of the fourteen-hour law which, it is understood, will require many, if not all, of the roads to readjust their divisions at a great expense and, since they must have a fair return on the money invested, this will be borne in the last resort by the public. It may come high, but the correct purposes of the law are plain.

DELINQUENT AND DEPENDENT CHILDREN AND JUVENILE COURTS.

The county and district courts are required to be, in addition to what they are, juvenile courts or courts having jurisdiction over delinquent and dependent children. A delinquent child is defined to be one under the age of sixten years who violates any laws of the State or city ordinance, or who is incorrigible, or who knowingly associates with vicious or immoral persons, who knowingly visits houses of ill-fame, gambling houses, saloons, wanders the streets at night or habitually wanders about railroad tracks, who jumps on and off moving trains and enters without authority any car or engine, who uses vile, obscene and indecent language or is guilty of immoral conduct in public places. Proceedings must be begun by the State's attorney in case of violation of State laws, and when a child is convicted as a delinquent the court has the right to appoint a probation officer who will take the child to his home, or leave it at its own home, subject to visits by the probation officer, or it may be boarded out or placed in some institution. The rights of parents to the child may be suspended at the dis-

cretion of the court, and ample provision is made, or attempted to be made, for jury trials and due process of law throughout. Imprisonment is to be resorted to only as a last extreme, and then the child must not be imprisoned with persons over sixteen years of age. A dependent child is defined as being one under sixteen years of age who is dependent upon the public for support; destitute, homeless or abandoned; who has no proper parental care or guardianship; who begs or receives alms; or who lives in a house of ill-fame or with vicious or disreputable persons or in an unfit place because of the depravity or neglect of its parents. Any child whose parents permit it to become addicted to the use of intoxicating liquors, permit it to be kept in saloons, gambling houses, or houses of ill-fame, is deemed to be without proper care or guardianship. It is the duty of the court to take charge of the child, whereupon it becomes the ward of the court and is turned over to some suitable person or some institution for delinquent children in the county or State, who is responsible for its education and maintenance. The court may require such reports concerning the welfare of the child as may be deemed necessary.

As stated elsewhere, there is an additional law providing for the punishment of persons contributing to the delinquency or causing the neglect or dependency of children.

The limits of the present occasion prohibit a discussion in detail of the scheme. Its commendable nature will doubtless compensate for the many obstacles and difficulties that are going to arise before its operation can be deemed entirely successful.

LIQUOR AND LOCAL OPTION.

The prohibition laws have entered for their full share of amendment, and, if only a fair percentage of the new provisions are upheld by the courts, local option districts should be dry and express companies would suffer a reduction of their intangible assets. Imposed on those handling C. O. D. shipments of intoxicating liquor is an occupation tax to the State of $5000 a year for each office or place of business, and common carriers are relieved from receiving such shipments for transportation. A $4000 annual State tax is levied on those soliciting orders for intoxicating liquors, and those selling non-intoxicating liquors such as the "Frosty," "Ino" and "Uno" in local option districts must pay $2000. In all of these cases the counties and cities may in addition make their usual levies. Another law prohibits giving or

selling to minors; while another makes a place where liquor is kept for sale without license a disorderly house; another declares such a place to be a common nuisance, and provides for searches and seizures and a destruction of goods and paraphernalia and for a remedy by injunction; by still another storing and keeping for others is prevented; and by yet a further act it is provided that local option cases may be advanced and will take precedence in the appellate court. A stringent law, which will go into effect July 12th, has also been passed regulating the business of selling liquors and increasing the license tax in localities where local option is not in force.

CIVIL PRACTICE ACTS.

Depositions.—The burdensome law passed by the Twenty-ninth Legislature has been repealed, and the substance of the old law in reference to the taking of depositions has been re-enacted. Articles 2291a, 2291b, 2291c, 2291d, 2291f and 2291g are added to the statute, and provide for a system of oral depositions similar to that in force in the Federal courts, except for taking under commission instead of on bare notice. The party desiring to take a deposition orally gives ten days' written notice to his adversary, stating the name of the witness and the time and place, and files in the clerk's office a copy of the notice, with an endorsement showing service; whereupon the clerk, at the expiration of ten days from the day of service, issues a commission under which the testimony is taken. If the party served does not desire to be present, he may file written crosses and a certified copy of them will accompany the commission. If the deposition is to be taken over 100 miles from the court in which the cause is pending, the party to whom the notice is directed may, by a notice to the moving party, require the deposition to be taken on written interrogatories by both parties, unless the court or judge shall otherwise direct. Before the questioning of the witness commences he must be sworn, and after they are written he must sign and swear to the answers. No objection is sustained by the officer executing the commission. He may note objections, but the party who has them noted is not confined to the ones noted.

On the whole it is believed that this is an admirable law and that with it our system of taking depositions is now good enough, at least for a while. It might have been better to omit the provision allowing a party to compel the filing of interrogatories

when the deposition is to be taken over 100 miles away, but in many cases a rule like that of the Federal courts works a great hardship upon poor litigants.

Pleas of *Privilege and Change of Venue.*—Notwithstanding the decisions of the Supreme Court to the effect that it is not necessary in a plea of privilege to affirmatively deny the existence of facts bringing the case within any exception to the general rule which requires suits to be brought in the county of the defendant's residence, it has been the practice of many good lawyers to make affirmative denial. They were scared into this by some of the decisions of the old Court of Appeals. However, the matter is now governed by a statute which provides that the plea shall be sufficient if in writing and sworn to, stating that the party claiming such privilege was not at the institution of the suit, at the time of service of process therein, or at the time of filing such plea, a resident of the county in which such suit is instituted, and stating the county of his residence at the time of such plea, and that none of the exceptions to exclusive venue in the county of one's residence mentioned in Article 1194 or Article 1585 of the Revised Statutes exists. It is further provided that the issuing of process for witnesses or taking depositions shall not constitute a waiver of the plea. But by far the best part of this law is a provision whereby the suit is not dismissed if the plea is sustained, but the venue is simply changed to the proper county, and the clerk of the court required to make up and forward a transcript of the proceedings had in the court where the suit was filed. And it is further provided that nothing in the act shall prevent an appeal from an order sustaining such a plea. It is noticeable, though, that this does not specifically give a right of appeal, and, since the suit is not dismissed, it is not thought that such a right would exist.

Injunctions and Appeals in Injunction Cases.—For several years this Association has advocated an amendment to the statute relating to injunctions which would deter litigants from applying to judges of districts other than the one in which the suit was to be brought, and an amendment of that kind has been enacted. It provides that no district judge shall have the power to grant a writ of injunction returnable to a court other than his own, save in certain contingencies. But the contingencies, conditions, limitations and exceptions are so complicated and varied that it may be doubted whether the law has been improved. The second section provides that an appeal may be taken in term time or vacation from the order or judgment granting an injunction. The transcript must

be filed in the Court of Civil Appeals within fifteen days, and on the hearing in the appellate court no briefs need be filed, but the appeal may be heard on the bill and answer and such affidavits and evidence as may have been admitted below. However, the appellant, at his option, may file a brief, furnish the appellee with a copy not later than two days before submission, whereupon the appellee has until the day of submission to answer it. And such causes may be advanced in the appellate court on the motion of either party.

Drawing Juries.—A law, applying only in counties containing a city or cities of 20,000 or over, has been enacted whereby a new method of drawing juries is put in force. The tax collector, tax assessor, sheriff, county clerk and district clerk meet between the 1st and 15th of August, 1907, and each two years thereafter, and get the names of all the eligible jurors in the county. These are written on cards and deposited in a wheel provided for that purpose. Then at fixed intervals thereafter, as juries are needed, cards are taken from this wheel, so that the selection is entirely one of chance, and the lists made up. The cards are kept out in a box until the persons have again become subject to jury service, and the lists made up are sealed in the presence of the judge and delivered to the clerk, who takes an oath which permits of no disclosure, and the entire proceeding is safeguarded, so that it would seem well-nigh impossible to get a bad jury in the favored counties. But alas!

> "The best laid schemes o' mice an' men gang aft agley
> An' lea'e us naught but grief an' pain for promised joy."

Acknowledgments to Deeds Over Ten Years Old.—It has been enacted that an instrument of writing permitted or required to be recorded and which, though defectively acknowledged, has been actually recorded in the proper book for as much as ten years, shall be admitted in evidence without proof of its execution, provided no adverse claim has been asserted during that time and the party offering it has filed it three days before trial and given notice to his adversary, and no affidavit of forgery is filed. The party offering the instrument may use a certified copy of the record by making affidavit of the loss of the original. This is a good law and might have been enacted with benefit a great many years ago; indeed, it might well be extended so that instruments of the character mentioned would constitute notice to the world.

Statements of Fact and Bills of Exception.—The law on this

subject has been amended so that statements of fact and bills of exception in civil causes may be filed at any time within thirty days after adjournment, and a court may file its findings of fact and conclusions of law as late as ten days after adjournment. Statements of fact may not be incorporated in the transcript on appeal, but may be sent up therewith. The party desiring a statement of facts must present his proposed statement to his adversary within fifteen days after adjournment and that side then has ten days in which to pass on it and agree or submit a counter statement, and the judge then has five days remaining in which to take action. A number of minor changes have been made in the phraseology of the law passed by the Twenty-ninth Legislature, providing for statements to be made out by the stenographer, but it has not been very greatly improved. The changes that have been made are doubtless enough to addle the brain of the lawyer who is determined to comply with the law and to furnish an easy method of catching out the one who is not so determined.

CRIMINAL LAW AND PROCEDURE.

The criminal law has been amended so as to punish burglary committed by the use of explosives and the law on extortion in office has been amended and strengthened. The keeping of gambling houses, or bucket shops, or the renting of property for gambling houses is made a felony; as is also the offense of being connected with a monopoly or conspiracy in restraint of trade, the issuance of free passes, and the contribution of corporate funds to a political campaign; and lobbying, contributing to the delinquency of children; cock fighting; betting on ball games; drinking liquor on passenger trains; fast running of automobiles, and the willful failure of a man to support his wife and minor children are made misdemeanors with adequate fines prescribed. Misdemeanors are defined also in connection with the new laws relating to revenues and taxation, medicine and pharmacy, fish and game, pure food, mining, barbering, liquor and local option, the operation of railroads; discrimination against employes; requiring corporations to produce and exhibit their books at the instance of the Attorney General; requiring hotels to have fire escapes of a particular kind; and the regulation of theaters or play houses. But no attempt will be made to review any of these in detail or at length.

A few changes in the Code of Criminal Procedure may be worthy of special notice. At its last convention this Association declared

in favor of a law permitting persons convicted of felonies less than capital to be released on bail pending appeal. A statute has been adopted and is now in force, carrying out the spirit of that recommendation. It applies when the term of imprisonment is fixed at fifteen years or less. The same act also provides that if the defendant in a felony case is on bail when his trial commences such bail shall hold and he shall not be incarcerated during the trial or until a verdict of guilty is returned. It also further provides that verdicts in such cases may be received by the court in the absence of the defendant, when such absence is voluntary, and that when the record shows that the defendant was present at the commencement or any portion of the trial, it shall be presumed, in the absence of all evidence in the record to the contrary, that he was present during the whole trial. Another act, likewise now in force, dispenses with the necessity of such defendants and their sureties appearing in open court to make bond for appearance when the court is in session and says the amount in bailable cases shall be fixed by the court and that the sheriff may take a bail bond, pass on its sufficiency, and release the defendant. And still another important law will go into effect July 12. It provides that a confession shall not be used if, at the time it was made, the defendant was in jail or other place of confinement, or in the custody of an officer, unless made in the voluntary statement of the accused taken before an examining court in accordance with law, or unless in writing and signed by him, which written statement must show that he had been warned by the person to whom it was made: First, that he did not have to make any statement at all. Second, that any statement made might be used in evidence against him on his trial, or unless, in connection with the confession, he makes statements of fact or circumstances that are found to be true which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed; provided, that where the defendant is unable to write his name and signs the statement my making his mark, such statement shall not be admitted in evidence unless it be witnessed by some other person other than a peace officer, who shall sign the same as a witness. This may prevent the conviction of many real criminals, but it may also save the souls of many sheriffs.

OTHER STATE LAWS.

The Sixth Supreme Judicial District with a Court of Civil Appeals at Texarkana is created; the Department of Agriculture,

with the Commissioner of Agriculture as its head, is added to the State government; a bureau of statistics in cotton, a pure food commission, a medical board, a mining board, a text-book board, a barbering board and a pharmacy board—all for the State—with defined powers and duties, and a commission to codify the laws are established; the law governing drainage districts is amended; municipalities are given power to regulate the rates of public utilities; the tax on certain useful occupations, including our own, is repealed after 1907; an obviously unconstitutional act undertakes to require commission merchants to give bond for the faithful performance of their contracts; provision is made for the redemption within two years of land sold to the State or cities or towns under foreclosure suits or otherwise; counties of over 40,000 population or containing a city with as many as 25,000 people must have county auditors; the Terrell election law is corrected so as to provide for blanket primaries, which means that the candidate receiving the highest number of votes is the nominee; telegraph and telephone companies engaged in the transmission of messages for hire are required under severe penalties to provide connections with other lines in the same business; chattel mortgages are presumed paid when six years past due and county clerks authorized to destroy them; the adversary is allowed to contest a pauper's oath; venue of suits for the recovery of usurious interest paid is fixed at the place of payment, the place of contract, or the residence of the lender at the time of contract; stipulations between master and servant requiring notice of claims for personal injuries are declared void; provision is made for service in suits against unincorporated associations and the necessity of all stockholders suing or being sued is obviated; the statute of escheats is remodeled so that a judgment of escheat does not become final for two years; and a cumbersome and apparently unnecessary bill prescribing proceedings necessary to ascertain the true heirs of decedents and foreclose unknown heirs ripens into the law of the land. See Bean vs. Dove, 77 S. W. Rep., 242.

We are the beneficiaries of a dozen or two other new State laws, general in their operation, but their enumeration may not be indispensable.

Bills were introduced covering substantially all the reforms advocated by this Association last summer.

CONGRESSIONAL LEGISLATION.

At our Texarkana meeting Mr. Garwood reviewed the laws passed at the first session of the Fifty-ninth Congress. At the second session there was but little important legislation of a general nature.

An act designed to prevent collisions at sea and, to that end, prescribing regulations for fishing vessels, went into effect on the 19th of January. No doubt those regulations are wise and better than the ones repealed, and our brother Walker and other members of the Association, who "went out of the jurisdiction of an admiralty court feel like the sailor ashore when out of sight of blue water," could entertain you on the subject.

On the 26th of January it became a Federal statute that no national bank or other corporation organized under authority of Congress shall make a money contribution in connection with any election to any political office and also that no corporation whatever shall make a money contribution in connection with any election at which Presidential and Vice Presidential electors or a representative in Congress is to be voted for or with any election by a State Legislature of a United States Senator. The penalty is a fine of not exceeding $5000 for the offending corporation and from $250 to $1000 for the consenting officer or director and there may be imprisonment for not more than one year. It will be noticed that the penalty is not necessarily severe; that if the contribution is in Government bonds or something other than money it is no offense; and that only officers and directors are personally amenable. Obviously the law is worthless unless it shall catch some violator ignorant of its existence and who therefore has omitted to circumvent it, and neither ignorance nor negligence of that kind occurs in politics.

By an act of the 20th of February there are excluded from admission into the United States all idiots, imbeciles, feeble-minded persons, epileptics, insane persons and persons who have been insane five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such mental or physical defect being of a nature which may affect the ability

of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists or persons who admit their belief in the practice of polygamy; anarchists or persons who believe in or advocate the overthrow by force or violence of the government of the United States, or of all government, or of all forms of law, or the assassination of public officials; prostitutes, or women and girls coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose; and contract laborers, who have been induced or solicited to migrate to this country by offers or promises of employment, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled.

An innovation in criminal procedure dates from the 2d of March when it became the Federal law that a writ of error may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, towit: From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the judgment is founded; from a decision arresting a judgment of conviction for insufficiency of the indictment, where such decision is based upon the invalidity or construction of the statute upon which the indictment is founded; from the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy. The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases. Pending the prosecution and determination of the writ of error in the foregoing instances, the defendant shall be admitted to bail on his own recognizance; provided, that no writ of error shall be taken by or allowed the United States in any case where there has been a verdict in favor of the defendant.

CONCLUSION.

No thinker can have a doubt that the future is large with judicial difficulties. It is safe to say that no Legislature in the history

of Texas ever enacted as many laws as the one recently adjourned. By the prolonged bickerings of a political feud the work was crowded into a short space of time. Many of the bills bear evidence of haste in their preparation, and clearness seems a virtue and tautology a vice forgotten. As a result, it is often necessary to grope through a maze of verbiage to discover a meaning and sometimes it is finally left in doubt. And that is not all. Trivial subjects, nice subjects and varied subjects have received attention, until one almost fears that syntax and table manners are included. There are always important measures demanding consideration, measures in which the people are interested, so that when thus coupled on are all the things that ambitions young lawgivers in their leisure, asleep or awake, can think of, the effect is bewildering. Furthermore, change seems to be the watchword. For several sessions the Legislature changed back and forth the law regulating the advertisement of sales under execution—and this is only a sample—until it was a feat to know the law. If present ways are not improved a few years will find us with a hundred pounds of code. It is startling enough to contemplate the geometrical progression of reported cases. But when the code problem is added—and the more code the more cases—what words can picture the dilemma? Simple mathematical calculation will remove all doubt of the seriousness of the subject. If the signs do not fail they mean ultimate codification in a true sense; the necessary brushing aside of instant American methods and the substitution of something better; the imposing of something more than clerical and mechanical work—codifying rather than compilation; a time coming when we shall have to follow the example of the French, who early in the last century from the chaos of customary laws built the Code Napoleon, which for conciseness and comprehensiveness has never had an equal; of the people of the German Empire, who more recently have achieved success in the same direction; and of the Spanish, who, after the labors of three great quarters of a century, have produced their Civil Code, which is claimed to be the late ripening flower of legal evolution. When our country has developed and the lawmaking mania has subsided; when the legislator has run his course and all conceivable subjects are covered and there is dire confusion; when it is realized that mere hewers of wood can not build a ship; when the people will and the politicians must put the matter in stronger hands and by change of organic law or free consent invoke and trust or approve the skill of a commission of our truest and most learned lawyers,

not only to compile, but from the mass of existing laws to legislate, a Texas code, or an American code; then and so sooner can there be devised in this country the system to which we are entitled, a code in keeping with our other achievements. That time is sure to come and a people with our record may be trusted. The victors of Yorktown, whose vanquished were the conquerors at Waterloo, can not accomplish less than the Corsican, nor can the defenders of the Alamo do less than a people of Spanish blood. If the Code Napoleon and the Codigo Civil were the marvels of the century, ours will be the embodiment of the best in all ages, not omitting the common law; the present and coming confusion will but serve as the essential background; and that generation will see the ideal system.

SHOULD THE LEGAL STATUS OF THE NEGRO BE CHANGED?

A PAPER READ BEFORE THE

TEXAS BAR ASSOCIATION

BY

MR. EDGAR WATKINS,
OF HOUSTON, TEXAS.

It would be improper to discuss before this body any sectional or political question.

The question in the subject is not political. No party has, or is likely to make an answer thereto a test of party regularity nor is the question one applying only to a particular section of our country. Nor will its discussion be biased by prejudice against the negro race. Though a son of a Confederate soldier whose earliest views of the Constitution of the United States were derived from a study of the speeches and writings of that great statesman and author, Alexander H. Stephens, I have ever felt that honest differences existed as to the proper construction of that Constitution, and that the memories of the Civil War ought not to prevent a fraternal feeling between those of both sections of our country who sincerely hope and strive for a united and happy state. My feeling for the negro is of the kindest. The old slave negro as well as some of his descendants is yet kindly, faithful and trustworthy, and the worthlessness of the average negro is more his misfortune than his fault.

The subject then being one that can with propriety be discussed here and its proper solution being so important to the future happiness and welfare of the negro as well as the Caucasian race, what body of men could more fittingly study the question than this association of lawyers? In every age where any freedom of thought and discussion has existed lawyers have been the leaders in discussing problems of government and in finding and applying

proper solutions of such problems. May the bar of the future, as of the past, retain its pre-eminence in the advocacy of such legislation as will be for the general good of society, and may it never be so dominated by commercialism as not to feel a greater obligation to society than a desire for selfish benefits.

THE EVIL.

It is always well to fully understand an evil before attempting to remedy it. Color is not the only distinction between the white man and the negro. The sutures in a negro's skull close early in his life, making his future mental development difficult if not impossible. The race separate from the white man has never accomplished anything, but has remained savage, or after being partially raised by white men and again left to its own resources quickly lapsed into savagery. (See Ridpath's Great Races of Mankind, Vol. 4, and History of Hayti and San Domingo.)

The inspired statement that the Ethopian can not change his skin also means that he can not change his nature. For a century in some of the States, and for forty years in all of them, the negro has enjoyed civil rights—what has he done with this gift? As a voter he is either venal or blindly supports the party having the same name as that of the party by whose acts he was emancipated. As to the great principles by which the two political parties in our country are distinguished he knows little and cares less, and when he does not sell his vote he blindly worships at the shrine of the past. As an official, no community North or South desires him, and few will submit to him. As a juror no one wants him, not even his own race, except theoretically when the desire is to escape trial by the quashing of a venire because of the absence of negroes thereon.

The negro today is less moral than he was when his movements were controlled by a master; he may have more education, but not more wisdom. The race does not repudiate its criminal members but shields them. We see illustrations of this every day.

In Houston a short time ago a negro soldier rudely and boisterously attempted to accost white ladies in a public place; upon trial and conviction he was fined, and being unable to pay his fine was put to work on the streets. A law-abiding race would have repudiated him; the negroes of Houston, by subscription, paid his fine. In the negro press you see far more condemnation of those who punish, whether legally or by lynch law, the criminal negro than you do of the criminal or the crime.

These conditions exist not alone in the South but wherever the negro lives, and some of the Northern States will give us their active assistance in any effort to remedy the evil, for they suffer as greatly as we. In fact, the greatest danger from the negro will be in the border Northern States, where by lifting him to a place for which he is unsuited he has been unfitted for the place designed for him by nature.

CAUSES INDEPENDENT OF THE NEGRO'S NATURE WHICH ADD TO THE EVIL.

Granting the negro civil rights is now very generally admitted to have been a mistake. Having a right for which he was and is unfitted has hurt the negro. His failure to properly use his rights is urged as an argument against allowing him any rights.

Jefferson, the founder of the Democratic school of political thought, and Lincoln whose teachings represents what is best of the Republican party, were in accord on the fact of the negro's incapacity for civil rights. Jefferson said:

"Nothing is more clearly written in the book of destiny than the emancipation of the blacks; and it is equally certain that the two races will never live in a state of equal freedom under the same government, so unsurmountable are the barriers which nature, habit and opinion have established between them." (See Jefferson's Memoirs; De Toqueville's Democracy in America, Chapter 18, page 378.)

Lincoln, in a speech at Charleston, Illinois, September 18, 1858, said:

"I will say then that I am not, and never have been, in favor of bringing about in any way the social or political equality of the white and black races.

"I am not, nor ever have been, in favor of making voters or jurors of negroes nor of qualifying them to hold office, nor of intermarriage with white people; I will say, in addition to this, that there is a physical difference between the white and black races which I believe will *forever* forbid the two races living together on terms of social or political equality. In as much as they can not so live, while they do remain together, there must be a position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race."

Later Lincoln privately suggested that limited civil rights might be granted the negro, but his plan would violate the Fifteenth Amendment to the Constitution of the United States. (Fleming's Documentary History of Reconstruction, Vol. 1, page 112.)

General Sherman, who certainly never showed any favoritism to the South, said:

"We all felt sympathy for the negroes, but of a different kind from that of Mr. Stanton, which was not of pure humanity, but of politics. * * * I did not dream that the former slaves would be suddenly without preparation manufactured into voters. * * * I doubted the wisdom of at once clothing them with the elective franchise and realized the national loss in the death of Mr. Lincoln." (Dixie After the War, pages 281-282.)

Suffrage was not given the negro because he was fitted to properly understand or meet its obligations and responsibilities, nor was the right given for the good of the negro, but rather as a punishment to the whites. War always arouses the worst passions of mankind, and the worst of mankind rise to power by pandering to those passions. Thaddeus Stevens, whose power came from this cause, in concluding an argument in favor of negro suffrage, said: "If it (granting the suffrage to the negro) be a punishment to the traitors, they deserve it." (Taken from the *Congressional Globe,* 1867, page 252.)

The Fifteenth Amendment was conceived in hate and perpetrated in fraud. The negro being the instrument by which the worst men vented the passions incident to a great war upon a conquered people, it is no wonder that such people should retaliate to some extent and that the negro should suffer thereby.

Giving the negro political equality bred a desire for social equality, and the desire was fostered by ignorant fanatics, dangerous Pharisees, and malevolent scoundrels.

There is nothing peculiar in the fact that the South resented the attempt to make the negro the white man's equal. The negro was freed in the North, as De Toqueville says, "not for the good of the negro, but for that of the whites." He was freed in the South because the North resented the competition of slave with free labor. Political equality was given him not for his good, but to humiliate his late masters. His interests were never consulted.

De Toqueville, in 1835, speaking of the Northern and free States, justly said:

"Thus it is in the United States that the prejudice which repels the negro seems to increase in proportion as they are emancipated. The prejudice of the race appears to be stronger in the States which have abolished slavery than in those where it still exists, and nowhere is it so intolerant as in those States where servitude has never been known." (Democracy in America, Chapter 18, Vol. 1.)

We see today that the negro is striving for social equality. Industrial education has been a hobby, and its chief apostle promised a few years ago to accomplish good for his people. Today he is more interested in having a home where association with whites is possible than he is in fitting his race for the sphere which they must occupy.

THE REMEDY.

Some things can be done by the States to ameliorate the evil, among which would be stringent laws against adultery and fornication between the whites and negroes, as well as laws preventing intermarriage. Such laws are constitutional. (Pace vs. Alabama, 106 U. S., 583.)

Laws should be so severe and so thoroughly enforced as to prevent white men becoming fathers of mulatto children. Such a crime is high treason against his race. Laws separating the races in public places have done good.

Four remedies have been suggested—expatriation, extermination, amalgamation and civil subjugation. Expatriation is desirable, but not feasible. Extermination may be forced upon the whites in defense of racial purity, but all hope and pray that such a solution may never be necessary. Self-defense, however, is equally as applicable to a race as to an individual, and the Caucasian will never submit to the degradation of being lowered to a mongrel.

Amalgamation is more horrible than extermination, for it means the extermination of the whites and the substitution of a less intelligent, less moral and weaker mongrel race.

More than four thousand years before Christ the Egyptians saw the danger to the race from an intermixture with the negro, and took steps to prevent it. The blatant advocates of social equality themselves stop short of marriage with the negro. It is as true anywhere in the United States now as it was when De Toqueville said that "Public opinion would stigmatize a man who should connect himself with a negress as infamous."

Subjugation is, then, the most practical and just solution. I do not mean that the negro should be deprived of any natural right. He must be protected in his life, liberty and property, but the rights which society grants or withholds at will should be taken from him. The root of the evil aside from his own nature was granting him rights which he could not appreciate nor use with benefit either to himself or others. Repeal the part of the Constitution of the United States which prevents the States from fixing the legal status of the negro, and let each State fix that status to fit the negro's nature, and something will be done for him.

Heretofore, legislation with reference to the negro has been for the benefit or the punishment of the whites; the repeal of that intended as a punishment will benefit both whites and negroes.

The negro will be able to make an honest living, he will know that political equality, if it ever comes, will be when, by generations of honesty, industry and virtue, he has fitted himself for it, and he will know definitely that social equality will come only when the Ethiopian can change his skin and the leopard his spots.

White men will know that they are free from the horror of race deterioration, and they will have a more sympathetic interest in the material, moral and spiritual welfare of the negro.

The negro will not be the dupe of the designing politician who supports him in his crimes because he can vote. Not having a vote, the criminal negro will receive no sympathy, and instead of being regarded as a martyr his just punishment will be applauded. The crime against white women will be practically unknown, as it was during the slavery of the negro, at a time when he never dreamed of social equality.

This remedy is just. No race except the negro has ever had full civil rights before it became intelligent enough to compel the granting of them.

The English, Irish, German and French people were more fitted for civil rights hundreds of years before they received them than was the negro in 1867.

It is not only wise but just that a gift which can not be appreciated, and which is dangerous to the donee, shall be recalled.

Accompanying any remedy must be a performance by the white race of its obligations. Let Southern people who know and understand the negro give him such education as he needs, thereby making it unnecessary that mischievous and mistaken fanatics who do not understand him shall control his education. Foreign and self-styled philanthropists give the negro a mental training which arouses dangerous and unattainable aspirations and unfits him for the paths that lead to contentment and virtue.

Southern Christians must remember that it is not enough to train the negro to be prosperous, law-abiding and contented, but that his religious nature should be shaped and developed by Christian neighbors who will not mix envy and discontent with his religious training.

POSSIBILITY THAT REMEDY MAY BE ADOPTED.

It is not only possible but probable that this remedy may be adopted. We see today the position of the South on public ques-

tions affected by the negro question. Take the government ownership of railroads, and it will be opposed by Southern statesmen because of the dangerous possibility of having negro conductors, even though without this danger such ownership might be expedient. Of course, I am not here discussing the merits or demerits of governmental ownership. If the people of the United States should ever determine that our government must own the railroads for their protection—a situation regarded by President Roosevelt as possible, and by Mr. Bryan as at least probable—they may, in order to obtain such, agree to decitizenize the negro.

Three-fourths of the States may become Democratic, and to prevent the negro aiding Republicans to regain power repeal the obnoxious clauses of the Constitution of the United States.

Negroes pursuing their usual disposition to defend the criminals of their race may seize upon some act of a Republican President justly punishing members of the race for outrages and murder committed by negro brutes wearing the uniform of an American soldier, and to punish the party of such President throw their votes in the doubtful States against that party. Should such a situation arise, and a United States Senator from one of these States evidently fears it may arise, the Republicans in those States are likely to conclude that the negro is unfitted to exercise the suffrage.

But, aside from these selfish reasons, the people North and South no longer feel animosity, one towards the other. We understand each other better, are not only a united country but a united people, and fraternal sympathy and a common interest have obliterated the Mason and Dixon line. Justice and the good of the whole country will guide us in solving the question. The selfish politician will either adopt the just course or be relegated to a deserving oblivion; then will we see righted the wrong of forty years' standing. The white man will be, by law as he is now by nature, and, in fact, recognized as the superior. The negro will be left to develop the powers he has, without burdening him with privileges for which he is unfitted and the exercise of which in any large degree is dangerous to our civilization.

But whether the remedy now appears possible or not, if it is a remedy, duty requires it be proposed and advocated. If it is not a remedy, discussion will show it and lead to something that is a remedy.

LIABILITY OF TRUSTS FOR PRIVATE WRONGS.

A PAPER READ BEFORE THE

TEXAS BAR ASSOCIATION

BY

MR. W. M. HOLLAND,
OF DALLAS, TEXAS.

In discussing the subject of the "Liability of Trusts for Private Wrongs," I shall endeavor to confine my remarks to a purely legal rather than to a political discussion of my subject.

The word trust in recent legal phraseology as well as in the popular definition of the term has come into general use for describing a trade monopoly or industrial conspiracy, and in this discussion it will be used in its modern and popular sense. The law dealing with this trust of commerce is growing so voluminous as to bid fair to crowd out the old technical trust of the chancery courts, and the latter will soon be compelled to adopt some qualifying adjective to its name such as "Equitable Trust," or else change its name entirely in order to be distinguished from the powerful trust of the mercantile or commercial law.

Inasmuch as the question of the legal restraint of trusts is now the most important and difficult subject engaging the attention of our courts and as it bids fair to retain this position for the next quarter of a century, it will not be out of place to revert briefly to their status before the common law.

We find that trusts or monopolies, save and except of course those monopolies created by the copyright and patent laws, were declared to be illegal under the common law by the courts of England.

Macaulay tells us that during the reign of Queen Elizabeth that these monopolies, which were royal grants permitting restrictions in competition in many of the necessaries of life, had grown so

numerous and become so oppressive as to cause discontent throughout the whole nation, and that upon one occasion "The coach of the minister of the crown was surrounded by an indignant populace who cursed monopolies."

The English courts came to the relief of the people, and in the case of Darcey vs. Allen, decided in 1602, held that a royal patent which granted the plaintiff the exclusive privilege for twenty-one years of manufacturing playing cards was an illegal monopoly and void at common law. The court stated the rule of the common law as follows: "All trades, as well mechanical as others, which prevent idleness (the bane of the commonwealth) and exercise men and youth in labor, for the maintenance of themselves and their families, and for the increase of their substance, to serve the queen when occasion shall require, are profitable for the commonwealth; and therefore the grant to the plaintiff to have the sole making of them is against the common law and the benefit and liberty of the subject." The court in holding the monopoly illegal diplomatically stated that the queen had been deceived in making the grant, for "the queen, as by the preamble appears, intended it to be for the weal public and it will be employed for the private gain of the patentee, and for the prejudice of the weal public."

The common law as interpreted by the English courts in later decisions also gave a dealer or manufacturer who was injured in his business by the malicious acts of an industrial conspiracy a right of action to recover his damages sustained. The majority of our American courts have also, in construing the common law, held that an injured party had this redress.

Our own Supreme Court of Texas, in the case of Delz vs. Winfree, 80 Texas, p. 400, was one of the first of our American courts to uphold this right under the common law. In above case the plaintiff, who was a butcher doing business in the city of Galveston, brought suit against the defendants, alleging that they had conspired with the two remaining dealers in fresh meats in the city of Galveston, and that the defendants maliciously refused to furnish plaintiff with meats for his business and induced the other dealers to refuse to supply him. The trial court held that no liability attached to the defendants and sustained a general demurrer to the plaintiff's petition. On appeal the Supreme Court reversed and remanded the case, holding that the plaintiff stated a cause of action and was entitled to relief.

It would seem clear as an elementary principle of the law of torts that when an association is formed for the purpose of com-

mitting a statutory crime, and practically all of our State as well as our Federal government make violations of the trust laws a crime, that the association's every act would be unlawful and that a right of action should accrue to each person who suffers an injury therefrom. It is the policy of our laws to encourage competition and when a person violates the statutory law for the purpose of injuring or suppressing a business rival it is and should be an actionable wrong. The advantage that wealth and legitimate organization gives should be freely accorded and a person, firm or corporation should, of course, be allowed to undersell less fortunate rivals as long as they act in good faith and in the channels of legitimate business; but when competition ends and fraud and malice begins the courts should be open and ready for redress—the criminal courts for the public's protection and the civil courts for private relief.

The Court of Appeals of New York in the case of Rourke vs. Elk Drug Co., 111 N. Y., p. 150, in a carefully prepared opinion, which is the leading case upon the subject, stated the rule regarding the liability of trusts for private wrongs as follows: "The combination charged being prohibited and made criminal, every act of defendants in furtherance of the object of the combination was unlawful and any person suffering special injury on account of any such act has a right of action. It makes no difference whether such acts if done by an individual not in the combination might have been lawful and a person suffering therefrom would be without remedy. The same acts done by agreement or combination of several are made unlawful and for that reason a right of action follows."

Our Texas Court of Civil Appeals, in the case of Wills vs. Central Ice and Cold Storage Co., 88 S. W. Rep., p. 265, which was appealed by the writer, held that a person has a right of action for injuries done his business which are in violation of the anti-trust law. The petition alleged that the defendants, who composed most of the ice factories operating at that time in the city of Dallas, had formed an illegal combination and had forced the plaintiff, an ice dealer, out of business.

The petition specifically charged the acts of defendants to be in violation of the Texas anti-trust law. The court held that plaintiff's petition stated a cause of legal liability; however, holding with the defendants upon the facts. This decision recognizes the existence of a remedy which may be used by the people as a weapon of offense against the trusts. Our Supreme Court, in the brewery

cases, decided a few years before, had placed in their hands a weapon of defense. In the brewery cases it will be remembered the court held that a contract the terms of which violated the provisions of the anti-trust law was absolutely void and unenforcible in the courts, and even where goods were delivered in strict accordance with contract, if the contract was contrary to the provisions of the trust law, the goods could be retained and payment therefor refused.

Our Federal anti-trust law passed in 1890 and commonly known as the Sherman Act, expressly recognizes the civil liability of trusts for private wrongs. Section 7 of the act reads as follows: "Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee."

In the case of Montague vs. Lowry, decided by the Supreme Court of the United States, 193 U. S., p. 30, the plaintiff, a resident of California, who was a dealer in mantels and grates, brought suit under above act against the defendants, who comprised an association doing an interstate business in mantels and grates. Plaintiff alleged that defendants by their unlawful agreement had hindered and prevented him from purchasing or procuring goods and wares to carry on his business. Upon a trial of the case plaintiff recovered judgment for $500, and pursuant to the provisions of the act above quoted, judgment for treble that sum, including an attorney's fee of $750, was entered for the plaintiff. The case was appealed to the Supreme Court of the United States, where the judgment was affirmed by the unanimous opinion of the court.

It seems strange that our Legislature, in the mass of anti-trust legislation which it has enacted, has never passed a law doubling or trebling the damages, including, also, reasonable attorney's fees, which an injured person should recover for injuries inflicted upon his business or his property by a trust. It is right and it is just that when a plaintiff comes into a civil court and shows that his business has been ruined, small though it may have been, by the malicious acts of a trust that he ought to be given redress. The word malicious is here used not in the sense of mere ill-will, but in its legal definition of a wrongful act done intentionally. Fur-

thermore, in a civil suit against an industrial conspiracy the plaintiff should be given the full benefit of the rules of law with reference to proving up a conspiracy by circumstantial evidence. It is not contended that in the civil prosecution of a trust for damages sustained that the burden should be upon the defendant to prove its innocence, yet it is believed that our Court of Civil Appeals in the case of San Antonio Gas Co. vs. State of Texas, 22 Texas Civ. App., p. 123, announced the correct rule as follows:

"Conspiracies (trusts) being in defiance of law, are conceived in secrecy and executed in such a manner as to avoid detection and exposure, and proof of such unlawful enterprises must, in the very nature of things, be made by circumstances, and every circumstance which tends to cast light upon the transaction is legitimate and proper."

In addition to permitting the plaintiff to prove the conspiracy by circumstantial evidence, he should in case the defendant deliberately or wilfully withholds or suppresses evidence, as is nearly always the case in trust prosecutions, then be given the fullest benefit of the rule of evidence which raises a legal presumption of the defendant's liability. Chief Justice Wheeler, in the case of Mitchell vs. Napier, 22 Texas, 129, commented upon this rule of evidence as follows: "The rule is deduced from the common observation and experience of mankind, that men are ever ready to state all that is favorable to themselves, and that when a party is interrogated as to the facts of a transaction, in which he has acted honestly and fairly towards the other party, he will not hesitate to state truly what the real facts of the transaction are."

It can not be disputed that our anti-trust law is now being violated daily, at least, in all the larger cities of Texas. Last winter the Legislature passed a resolution calling upon the Attorney General for information as to what trusts were operating in Texas. In response to that resolution the Attorney General sent a communication to the House of Representatives, stating in substance that, in his opinion, every important industry of the State was controlled by some character of an association or organization operating in violation of the laws of this State.

Our anti-trust legislation up to the present time has been framed chiefly with the view of preventing its violation by force of the criminal penalties attached. Violations of the anti-trust law have been a felony in Texas since 1889. A careful investigation of our criminal reports shows that during this period of eighteen years only one trust case has gone before the Court of Criminal Appeals,

that being the case of the State vs. Hathaway, 36 S. W. Rep., 465, decided eleven years ago. In this case the defendant was by indictment charged with having entered into a conspiracy with John D. Rockefeller, Henry H. Rogers, H. Clay Pierce and several other gentlemen for the purpose of fixing and maintaining the price of oil in violation of law. The defendant was convicted in the trial court, but on appeal his case was reversed. Inasmuch as the State has not secured during this entire eighteen years a single final conviction under above law, it would seem that the criminal statute is not very efficacious in preventing trusts. Whether the criminal laws and criminal courts are unable to cope with these industrial conspiracies—evils which threaten the very foundation of government and of society—because of the technical rules governing the drawing of indictments and the admission of evidence or whether they are unable to cope with them because of the difficulty of proving a conspiracy under the rules of law which "presumes the defendant to be innocent" and which requires the State "to prove his guilt beyond a reasonable doubt," or whether they are unable to cope with them for other reasons, the fact remains that out of the hundreds of violations of the anti-trust law in Texas during the past eighteen years that there has been, as shown by the criminal reports, but one conviction and that one was reversed.

It has been suggested that one reason there have been so few criminal convictions was the fact that the law did not offer sufficient inducements to the prosecuting attorneys in the way of fees. Heretofore the prosecuting attorney has been entitled to a fee of $40 for convicting a trust magnate, the same fee allowed him for convicting a common horse thief or ordinary burglar. It would seem that our last Legislature thought there was some merit in this theory, for by Section 20 of the Trust Law Amendments it increased the fee of the prosecuting attorney to $250 for each conviction.

While our prosecuting attorneys have been apparently helpless in enforcing the purely criminal features of the law, yet our different Attorneys General have gained a few real victories in forfeiting charters and recovering penalties against the great corporations for violating the anti-trust law, and not the least of these is the splendid initial victory our present Attorney General has won in the recent Waters-Pierce case. However, the prosecution of these great corporations for violating the anti-trust law will doubtless occupy the time of the Attorney General's Department and his office will lack the time to give the necessary attention to

the prosecution of the lesser trusts. That this is true is evidenced by the amount of time and travel it took to prepare the State's case for trial in the Waters-Pierce suit. In a recent conversation with the writer, Assistant Attorney General Lightfoot stated in answer to an inquiry that he, in addition to the work done by the Attorney General and the other lawyers in the case, had put in over twelve months' time upon that case and that in procuring the necessary evidence he estimated that he had traveled something like 10,000 miles.

Our anti-trust legislation is undergoing a process of growth and development. To read the Act of 1899 sounds like reading a political platform or a sophomore's oration, while the Act of 1903 is short and concise by comparison. The last Legislature added several amendments and adopted some new laws for suppressing trusts, the more important being:

1. Giving the Attorney General visitorial and inquisitorial powers as to the books and records of all corporations, foreign and domestic, doing business in the State.

2. Providing that in suits against corporations upon application of the Attorney General the court shall appoint a special commissioner, who is given great powers in taking testimony.

3. Giving the State a lien upon the property of all corporations that violate the State's trust laws and providing for the appointment of a receiver of the offending corporation.

4. Broadening and increasing the criminal features of the Act of 1903.

While these laws increase the efficiency of our anti-trust legislation it seems reasonable to assert that the great majority of the trusts will continue to operate in the future as they have done in the past, regardless of their terms.

These criminal and quasi-criminal prosecutions carried on in the name of the State should be supplemented by private civil prosecutions. The decisions cited above have settled the law in Texas to the effect that a civil action will lie against a trust at the instance of the injured party. This right should be made clear and broad by a statute similar to the Federal statute, providing that the damages recovered should at least be trebled and should include all reasonable attorney's fees. In the private civil prosecutions of trusts the fight will be to the finish. The self-interest of both plaintiff and his lawyer will be a guarantee against interest in the prosecution lagging. There will be no change of prosecuting attorneys every two or four years. The same lawyer

who begins the prosecution of the case will remain with it to the end. Public interest in the case may die out but the prosecution will still go on. Political pressure will be unavailing to get the case dismissed and it can only end by the defendant winning its fight or paying its penalty.

The greater efficiency of private civil prosecutions over criminal prosecutions is shown in our railroad accidents. In many of the wrecks and accidents causing loss of life the agents and employes of the railroad are guilty of negligent homicide, yet who ever hears of one of them being convicted? On the other hand, how seldom do we hear of the railroad escaping its civil liability for these same acts?

The law regarding the regulation and liability of trusts is still in its formative period. While up to the present time the criminal law and the criminal courts have apparently been helpless to deal with the subject, yet we must remember that the criminal law, especially in its procedure and method of administration, is at least thirty years behind the progress of the age, and although the bench and the bar are noted for their conservatism, it is safe to predict that in the course of time our criminal procedure will be simplified and trials of cases expedited, and then convictions under our anti-trust law will become both possible and frequent.

The time will doubtless come when the special privileges conferred by legislation, national and State, will be repealed—and when our trust laws will be made clear, simple and concise in terms and reasonable in their restrictions. The rule of law will become firmly fixed with the lawyers and with the laymen that when a person, firm or corporation injures another in his business or property by violating the trust law that the injured party will have ample redress in the civil courts and this will of itself prevent the formation and operation of many of the trusts that would otherwise exist in defiance of law.

LEGAL ETHICS.

A PAPER READ BEFORE THE

TEXAS BAR ASSOCIATION

BY

MR. JOHN CHAS. HARRIS,
OF HOUSTON, TEXAS.

Twenty-five centuries ago, as the sun rose from out the desert beyond the Dead Sea, its rays fell upon the gilded dome of the temple at Jerusalem, where a multitude of priests in their gorgeous robes were conducting an elaborate ritual in what was perhaps the most ornate temple ever erected to the one true God. Ecclesiastical processions were marching hither and yon, and the air was perfumed from a myriad censers; thousands of rams and bullocks were being sacrificed and rivers of oil were being poured out in elaborate ceremonies to propritiate the Almighty.

And the morning rays of the same sun also lighted up that great prophet of the people, Micah, in the desert; and as Micah beheld the temple, and the army of priests with their thousand and one precepts and rules regulating in every minute particular the daily lives and habits of the people, Micah was inspired by the spirit of the living God, and he cried out: "What doth the Lord require of thee, but to do justly and to love mercy."

The words of Micah fell on ears that hear not; and his voice was silenced by death; and for five hundred years the dust of his bones had been mingled with the sands of the desert when another prophet, mightier than Micah, lifted up his voice in the same land, and in the same desert; and beholding the same temple and the priests and the sacrifices and the people contending with the same thousand and one "thou shalts" and "thou shalt nots," this Son of the Most High spoke to the people, saying:

"Treat others as you like them to treat you."

And in these two rules we have a complete code of legal ethics; that is, a complete moral code in the practice of law, for the word

legal comes from the Latin *lex, legis,* a law; and the word ethics is derived from the Greek *ethikos,* meaning of or relating to morals; so that legal ethics may be defined as the moral code applied to the practice of law; and this might be summed up in its entirety as follows:

First—Do justly and love mercy.

Second—Treat others as you like them to treat you.

And here this address might well close; yet it may, perhaps, be instructive to apply the above maxims to some cases arising in our daily practice.

But, before making an application of the rule to do justly and love mercy, it might not be inappropriate to consider the precise meaning of the command: Justly is from the Latin *justus,* meaning right or justice; and is defined as conforming to rectitude or justice; not violating right or obligation; upright, righteous, honest, true. So that to do justly is to act conformably to rectitude; to so act as not to violate any right or obligation; to be upright; to be righteous; to be honest; to be true and truthful.

Mercy is an abbreviated French form of the Latin *misericordia,* which means having a heart to pity; and is defined as compassionate toward an offender or adversary; willing to spare and to help.

The Golden Rule: To treat others as you like them to treat you, is simplicity simplified, and an axiom reduced to its lowest terms.

And bearing these definitions in mind it will not be amiss to apply the above rules to concrete cases:

Let us suppose that one of the leading citizens of the county has murdered another citizen, by shooting the victim in the back, when he is unarmed and as he is attempting to escape. The assassin, who is one of the richest men in the county, does not desire to pay the penalty of his offense, and be hung. He comes to your office and offers you a retainer of $10,000 to acquit him. You naturally inquire what is his defense, and he replies insanity; or, perhaps, he answers self-defense.

You know that the man is not insane, but you also know that your client is rich enough to hire learned doctors of medicine who will testify in medical jargon that the murderer is a paranoiac, and is suffering from paralitica dementia and arthritic, cyclic, homochronus, homologus and ideophrenic insanity; again, you know that he did not commit murder in self-defense, because his victim was unarmed and attempting to escape at the time he was shot in the back, and you further know that your client is rich enough and powerful enough to produce witnesses who will swear that the deceased was a man of most violent temper, very dangerous, and had

made threats to kill your client on sight; and, all considered, it is quite evident you can get a verdict of acquittal and earn $10,000.

As a matter of legal ethics, are you justified in talking the case, accepting the $10,000 cash retainer, and setting up the defense of insanity or self-defense, or both, when *you know they are both false*, as a matter of fact?

By the first rule you are obliged to act justly; that is, you must be honest; you must be true; you must do right.

Is it honest to knowingly set up a false defense in this case? No.

Is it right or honest or true to set up the false pleas of insanity or self-defense in this case? No.

Then you are obliged to refuse the $10,000 cash retainer and to decline the employment.

But are you justified in accepting the cash retainer and setting up *such* defense as you believe to be honest; to be just; to be true?

Certainly you are, but your criminal practice is apt to be extremely limited.

What defense, then, is a criminal lawyer justified in making? The answer is every defense which is just, honest, true and right.

The very foundation of our system of jurisprudence and government is *justice according to law*, and that is what the criminal is entitled to have, justice according to law; for it is better that nine guilty men should escape than that one innocent man should be unjustly punished; and the criminal lawyer has a right to demand that the entire truth shall be presented in the facts, and that after this has been done his client, if convicted at all, shall be convicted according to law; and here it might be well to remark that the law is just as much enforced under a judgment of acquittal as under a judgment of conviction.

Let us take another concrete example, and this time from the civil practice of the law.

Let us suppose that the richest man in the county has loaned another citizen money and taken a mortgage upon all the goods and chattels and hereditaments and appurtenances and choses in action and franchises and things tangible and rights intangible, and, in fact, a mortgage upon everything except the man's soul; and that the debtor has had great misfortune and sickness and trouble, and is temporarily unable to pay; and that the rich man, whose friendship and favor and patronage is valuable to you, a lawyer, comes into your office and demands that the debtor be pursued in terms of the law; that the mortgage lien be foreclosed; that the debtor's property be forced upon the market, purchased by the creditor for one-tenth of its actual value, the amount of the

execution sale be credited on the debt, and judgment held over the debtor for the balance remaining unpaid, although at a fair valuation the mortgaged property is double the amount in value of the debt; and the rich man tenders you $1000 as a cash retainer to do this act.

What does the code of legal ethics require? Shall you accept the retainer and keep the patronage and favor of the rich man, or shall you return the retainer, lose all the business which this rich man might give you, and incur his personal enmity and dislike?

Let us apply the two rules given.

Treat others as you like them to treat you. If you were in the debtor's shoes and temporarily embarrassed, financially, would you like to have the mortgage lien foreclosed, and your property sacrificed, when by a delay of three or six months you could pay off the debt and retain your property? You know you would not, and neither would the rich man himself, if he were in the debtor's shoes.

Again, if you would do justly *and* love mercy, you can not be an instrument of oppression in the hands of a rich client; and you will note well that the rule does not read: thou shalt do justly *or* love mercy; but that you must do both things—you must act justly and love mercy.

Now justice according to law would perhaps warrant your filing foreclosure proceedings and absolutely sacrificing the property of the debtor; but the rub is, that you must also love mercy; and mercy is the quality of being compassionate toward an offender or adversary, and willing to spare or help him; and, therefore, under the rules you must decline the $1000 retainer and refuse to take the case.

But must no debtor be pursued according to law, and must no debt be paid? Certainly, the debt must be paid, for the debtor also is required to act justly, and to treat others as he would like them to treat him; and it suffices to say that as these rules apply to every case, so each man according to his own conscience must fit the rules to each individual case as it arises; nor must any other man assume to sit in judgment upon him, for he alone and no other is responsible for his own actions in the day of judgment.

What is the duty of the lawyer in regard to abetting quarrels and provoking litigation? For instance, I will suppose that you are consulted by a husband who has plenty of money to spend in litigation and would like to get rid of his old wife and marry a new and younger one. In a case like this a client is apt to feel that he will not permit money to stand in the way of his wishes.

You consult with your client carefully and ascertain as a matter of fact that he has no statutory ground for divorce. However, the client insists upon your bringing suit, and says that he will furnish the evidence himself, although you know from your confidential relation to your client that this evidence must necessarily be manufactured. What is the duty of the lawyer in such a contingency? Well, he must treat others as he would like them to treat him; and in this particular event he might treat, in his mind, the wife of the client as though she were his own daughter. Again, the lawyer is required to act justly, and this means to be honest; to do right; and this train of reasoning would compel the lawyer to decline the employment; and generally in all cases where the client seems to be desirous of bringing unjust lawsuits, or to be malicious or anxious for revenge, it would appear to be the duty of the honest lawyer to decline employment in such litigation.

Again, suppose you are consulted by a client who is rich and well able to pay, and upon discussing the case with him you feel that your client is entirely wrong, and that if he brings suit he will undoubtedly lose. Should you candidly and honestly tell your client what you believe, or should you assure him that the law is proverbially uncertain, that he will as likely as not win, and that he ought to litigate. In this case you have to consider that you must act justly, and that means honestly and truthfully; and it would appear that in all such consultations you must frankly and fully advise your client that to the best of your judgment and ability he has no case.

Let us suppose as another example that you have just collected $5000 for a non-resident client, who is spending three months abroad; on the day that the collection is made you can remit the $5000 in New York exchange to your client's home office, and the same will be deposited to his credit; on the other hand, your client knows nothing of the collection, and as he is abroad, is not likely to know anything about it until he returns, three months from then; and in your judgment the wheat market or the cotton market is bound to advance in price; so that by investing temporarily the $5000 of your client you feel quite sure you can make $10,000, and when your client comes back you can remit him his $5000, and you can have $5000 to your own credit, without having done your client any harm.

Query: Are you justified in using your client's money in this way, when you make $5000 by the transaction and your client is done no injury?

Would you like some friend of yours to collect $5000 of your

money and then, without your consent, invest it in cotton futures or wheat futures? You know you would not. Then you can not use your client's money, for you must treat him as you would like him to treat you; and, then, besides, you might lose, because the market might not advance but might accidentally decline; and, then, perhaps, you would not be able to return the $5000 of your client's money; and if you could not repay him that would not be honest; and by the rule you are required to do justly; that is, to be honest.

And from the above example we may deduce the general rule that money collected on account of a client should be remitted to that client on the day of collection.

Another case. Let us suppose that you have been consulted for years by a client who has, naturally, confided to you his most confidential business affairs, and has consulted you both in your office and on the public highway; when you had a specific retainer and when you had no specific retainer; sometimes consulting you as a lawyer and sometimes merely as a friend and confidential adviser.

You finally fall out with this client, and he retains other counsel; and you quite naturally think that your client is entirely in the wrong. Finally, you are retained against your former client in a case where your personal knowledge, obtained when your former client was your friend, would be of great advantage in the pending suit.

Query: Are you justified in any way in acting upon such private information and personal confidence, to the injury or disadvantage of your former client?

Again apply the rule: Treat others as you like them to treat you. Would you like a person in whom you at one time had reposed confidence to betray that confidence because you had quarreled? You know you would not.

Again, you are required to do justly; and that is to be honest; to be true. Is it honest to betray a confidence because you have a private grievance? Is it being true to a friend to betray private confidences because you have later quarreled with him?

Tested by these rules you will see that, whatever may happen, you can not betray the confidences that were reposed in you as a lawyer, no matter how you may try to silence and quiet your own accusing conscience by specious reasoning.

Consider that you are consulted by a client who has about half a million dollars of assets and about one million dollars of liabilities, which are just obligations. Some day this client consults you and tells you that while he appears to be a very rich man, yet

his liabilities are twice his assets; that he is now getting along in years, and that he believes that his first duty is to his wife and to his children; and that he considers the duty he owes to them to support them in the luxury and style to which they have been accustomed is superior to the duty which he owes to pay his honest debts; and this client suggests to you that if out of the wreck you can save $200,000, you can have $100,000, and he will take the remaining $100,000 for the support of himself and his family in his declining years.

Are you justified in accepting this case and assisting your client to deceive his creditors as to the true state of his affairs by fraudulently conveying the property of the client to his relatives, kinsmen and friends; by converting personal property into ready cash and concealing the cash; by permitting your client to make false statements to the bankrupt court; and, generally, by devious ways and means, forcing the creditors to accept 30 cents on the $1 in full of all obligations, because out of the $500,000 of assets you have succeeded in concealing $200,000, thus leaving only $300,000 to pay $1,000,000 of liabilities?

Are you justified in assisting your client in this manner, when personally you make no false statements, and merely obey the instructions of your client?

Well, let us apply the rules. You are required to act justly, not only toward your client, but toward the creditor; that is, you are required to be honest; to be upright; to be true, toward the creditors as well as toward your client.

Again, you are required to treat others as you would like them to treat you. If you were a creditor, would you like some lawyer to treat you as you propose to treat the creditors? If you were a creditor, would you consider that such a lawyer was upright and true? Would you consider that such a lawyer was acting justly and honestly? The answers to these questions will answer the suppositional case, and will indicate that no lawyer can be a party to such a transaction.

Let us discuss the lawyer at the bar of the court by a consideration of certain specific cases. The statute law requires that when a lawyer files a motion it shall be noted on the motion docket and that all parties connected with the case must take notice thereof.

Let us suppose you have filed your motion and at the same time it has been noted on the motion docket, that the matter is one of importance, and that when the motion is called your adversary is not present to be heard, because you never have furnished him with any copy of the motion and never have notified him in any man-

ner that you have filed the motion, or that you will call the same up for hearing.

Are you justified in going ahead and submitting the motion? Let us test this matter by an application of the rules.

You are required to act justly, and, as you have complied with the statute law, we will assume that in strict justice you may proceed with the motion; but before you proceed the question must be further tested. You are not only required to do justly, but you are just as much required to love mercy; and mercy is defined as compassion towards an adversary and a willingness to spare and help, from which it would appear that you can not go on with the hearing of the motion.

And you are also required to treat others as you like them to treat you; and no one would be more indignant than you should your adversary proceed to hear a motion, without giving you some personal notice. It thus again appears that you can not go on with the motion.

Some fine morning you go into the court room with your client and witnesses all ready to try your case; you have already carefully gone over the jury panel and have decided that it is a very favorable panel for this particular suit; but when the case is called for trial, although two members of the opposing law firm are present in court, it appears that the particular member of the firm who has prepared this case, and is the only member of the firm at all familiar with either the law or the facts, is sick at home and can not personally conduct the cause, or it appears that his wife is so dangerously ill that he does not feel that he can leave her bedside, or that his mind is so distracted by the serious illness of a child that he does not feel that he can properly try the case. Upon all these facts being presented to your client he insists that you try the case now, because he sees clearly that with a favorable jury panel, and in the absence of the one lawyer on the other side, who knows anything about the case, he will surely win.

What is your duty upon the above state of facts?

You are required to act justly toward your client, but you are also required to love mercy; that is, to show compassion toward your adversary; and you are also equally obligated to treat your adversary lawyer as you would like him to treat you, from which considerations it appears that if you would not like your adversary to proceed against you in a similar case you can not now proceed against your opponent; and if you would not like your client to be proceeded against in a similar case, you must not now proceed against your adversary; and you must never think that you can

successfully throw off upon your client the responsibility of your own mean action and escape the odium thereof.

Let us assume as another example that you are arguing a general demurrer in a case involving $30,000, and that you know there is a long line of authorities supporting your contention; but suppose you know, on the other hand, that there is one authority by a very eminent court absolutely adverse to your position; you have made a long argument and have presented all your authorities to the trial judge who, apparently, is very much inclined to hold against you. In your argument you have said nothing about the adverse decision by one of the most learned courts in the land. You sit down. Your opponent attempts to answer you, but in his argument utterly fails to cite the strongest case in his favor. At the conclusion of your address the court turns to you and inquires if you know of any case or cases which conflict with the law as stated by you in your opening argument.

Query: What is your duty to the court, as a sworn officer of that court?

By the rules you are required to act justly toward the court; to be honest with the court; to be upright with the court; and you are required to treat the court as you would like the court to treat you, if your positions were reversed, and you were attempting to do justice according to law. In view of these rules, it would appear that you are compelled to advise the court of the adverse decision, although your client should thereby lose his suit.

With regard to the elemental consideration of courtesy and politeness toward the court, toward opposing counsel, opposing witnesses, and the adverse party: You have but to apply the rule, to treat others as you would like them to treat you; and, as this world is much like a looking-glass, the chances are that if you treat them as you would like them to treat you, they will treat you as you would like to be treated.

But what about the lawyer doing his full duty by his client? Well, this may be said about that proposition: That the oath of office, taken by a lawyer in Texas, is that *he will honestly demean himself in the practice of law, and will discharge his duty to his client to the best of his ability*, but it is a great mistake to suppose that the lawyer owes no fidelity to any one except his client; and no lawyer ought to represent any client in any case in a matter which is contrary to the dictates of his own conscience; for if he honestly demeans himself in the practice of the law; then he must be honest, not only with his client, but with the court, with the jury, with the witnesses, with the lawyer opposed to him, and with the ad-

versary party, for there is no limit in the oath which he takes when he is admitted to the bar, and this oath that he will demean himself honestly in the practice of the law means no more than the command of Micah to do justly.

It will not be contended, I think, that a lawyer's fidelity to his client demands that he lie for his client, or steal for his client, or swindle for his client, or prepare fraudulent papers for his client, or make false statements of either the facts or the law for his client.

In my view of the profession of the law, the lawyer is not a hired mercenary; nor a hired blackguard; nor a hired vilifier of the other side; but rather he is to be compared to the noble knights of the Middle Ages, who were professional warriors in the interest of truth and justice; who donned their armor and fought their battles, after due notice, in the open; their oath was to conquer or die on the field of honor, but they were to conquer in a fair and open fight.

Again, the lawyer may be looked upon as a professional duelist, who sends a challenge to his enemy, naming the time and place of the meeting, and with courtesy and courage defeats his adversary in an open, fair conflict, if he can.

It is not an open, fair fight that offends against legal ethics, for the hard fighter at the bar is always respected by his brethren; but the lawyer who is justly condemned is the one who appoints a time and place for the contest and then secretly ambushes and waylays his adversary in the dark and stabs him in the back.

I have given only a few instances to show the application of the rules, where ten thousand instances might be given, and will continually occur in the practice of the law.

As to the rules which I have cited as forming the whole basis of legal ethics, *I know that these rules are absolutely right.*

As to the application I have made of the rules, I may be entirely wrong; and every lawyer must apply the rules according to his own judgment, as he alone is responsible for his own actions in the forum of conscience.

UNIFORM LEGISLATION.

A PAPER READ BEFORE THE

TEXAS BAR ASSOCIATION

BY

MR. ROBERT A. JOHN,
OF BEAUMONT, TEXAS.

In this age of chronic reformation, it has been suggested that all legislation should be uniform. To build up homogeneity of customs and laws would thereby tend to create a homogeneous people. I was convinced that in a modified sense such a result was what the immortal Kansan would term an "iridescent dream." How could such a thing ever be accomplished with forty-six Legislatures making annually laws for forty-six distinct and sovereign States. The very genius of local self-government forbade the possibility of such an accomplishment. As phonetic spelling would precipitate a confusion of tongues, so multiform law-making would result in a confusion of laws. Phonetic spelling, endorsed by Carnegie, who speaks the unspeakable language of Burns, and approved by that other irrepressible reformer, who speaks many idioms, must certainly have a sound basis before sound spelling could become sound and solid. For instance, how would a New Englander spell "calf" or "calm" or "either" or "neither," or a Virginian spell "garden," or an Arkansas traveler spell "gwine"? Of course, I knew that the Constitution was flexible, in the sense that it could be changed and other grants made by the States to the National Legislature. Did not Mr. Jefferson say that, "Laws and institutions must go hand in hand with the progress of the human mind; as that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions changed with the change of circumstances, institutions must advance also, and keep pace with the times, and let us, therefore, provide in our Constitution for its revision at stated

periods." But that the old garment cut for our ancestors had within itself an element of evolution and growth to meet the growing needs of a highly organized, complex and populous body politic, I did not believe; hence was first disposed to endorse the Congress who, by moral suasion, proposed to persuade sovereign States to adopt uniform laws on certain subjects of general and universal application.

Let us see what has been accomplished by this Congress, composed of commissioners appointed by the Governors of the respective States. It has held sixteen annual sessions—the next session to be held in Portland, Maine, during the ensuing month. Thirty-four States and two Territories and the District of Columbia will be represented. Texas has not yet signified its intention to participate. Among the laws recommended by this Congress in the past, one uniform law on negotiable instruments was formulated, and has since been adopted by twenty-eight States. The last session has formulated and is advocating the adoption of uniform statutes on the sale of personal property and on warehouse receipts; the next one will take up Professor Ames's proposition of a uniform statute on partnerships.

As a general proposition, uniformity of law has great advantages, with at least forty-six appellate courts in the different States, in addition to the Circuit and Supreme Courts of the United States, all construing statutes, alike in generalities, unlike in particulars and details, and each court declaring rules of decision on the unwritten law, of course, confusion is inevitable.

It is submitted that,

(1) The law should be made as simple as possible, and

(2) It should be made certain.

Laws regulating negotiable instruments, sale of personal property, partnership, corporations engaged in either intra or interstate commerce, warehousemen, bills of lading, and even contract and non-contract law could be made more certain and better understood and easier applied if the written law upon each subject was uniform over the entire nation. The simplification and certainty of these laws could be further subserved if we could also establish some method of uniform construction. This could be accomplished only by making the first decision of a court of final resort of any State under the uniform statute *stare decisis*, and if some obstreperous tribunal should deliver a later conflicting opinion, permit a writ of error to be sued out to some higher tribunal, say the Supreme Court of the United States. Such an ideal and Utopian arrangement carries out the constitutional guarantee that

"the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States."

Under such circumstances, the citizen himself in most of the ordinary concerns of everyday business, would know without the aid of either a local lawyer or one of another jurisdiction what were his rights. The lawyer whose client is involved in other States could confidently rely upon his own code, or the rules of decision of his own State, and advise his client as to his rights in any other State of the Union. Contracts drawn in one State to be performed in another would be no longer colored by the law of the alien State nor abrogated by local rules and conditions never contemplated or understood by the parties who entered into the same.

Litigation, the last resort of every true lawyer (and I might say the delight of a good one), would be minimized and the result in advance made more certain.

Property rights better understood would be safer, and mankind be happier sleeping in peace, the long, the short, the fat and the lean in the same Procrustean bed.

But why, with a flexible Constitution and the evolution of Federal authority, should we worry with a Congress on uniform legislation? To secure uniform legislation and comparative uniform construction, it is admitted a Federal statute is more certain, and the Federal judiciary surer in the accomplishment of such a result than an identical statute adopted by all the States severally and construed by all their different courts. Hence the inevitable suggestion that Congress should act whenever perverse and stubborn States decline to adopt some of the suggestions of these uniform reformers.

A national and, therefore, a uniform banking law is already partially developed. A national and, therefore, uniform bankruptcy still exists.

Friction between Texas and Louisiana resulted in a national and, therefore, a uniform quarantine law.

A national and, therefore, a uniform pure food law is upon our statute books.

When certain States declined to pass the uniform law on negotiable instruments, the distinguished president of the Uniform Legislative Congress recommended in his message the following: "Let Congress adopt our negotiable instrument law as the law governing negotiable instruments arising in the Federal courts or arising under interstate commerce law."

Commissioner Garfield suggests that Congress enact a law for-

bidding all corporations from engaging in interstate commerce, unless permitted to do so by a Federal license or franchise.

Senator Beveridge insists that products made by manufacturing concerns who employ children of tender years be prohibited from engaging in interstate commerce. Senator Dryden desires that all interstate insurance business be declared commerce between the States.

A national and, therefore, a uniform tariff upon freight and passenger transportation is being evolved by the Interstate Commerce Commission.

A national and, therefore, a uniform anti-trust law is making the octopi miserable.

It is a matter of genuine surprise that the Divorce Reform Congress did not insist that we have Federal legislation regulating the marriage of citizens of different States, declaring such contracts as interstate commerce, or at least one of the adjuncts, aids or animate instrumentalities of that doctrine.

Let us see how much uniformity of legislation could be obtained by an expansion of the grant to the Federal Legislature to regulate interstate and foreign commerce.

The growth of commerce through increased facilities of transportation and improved methods and inventions has substantially eliminated transactions purely and exclusively domestic and local. The clothes we wear, the houses in which we live, the food we eat are partly, at least, made up from some interstate shipment. The flour in our bread is no longer ground by our neighbor, the miller; our roast beef is no longer bought from our friend, the butcher. One State raises the wheat, ships it out to another that grinds it into flour, from whence it goes to a third to be baked into bread, while a fourth distributes it to the balance of the Union for consumption. Our slaughter pens or smokehouses are in Chicago or Kansas City. Our garden truck is shipped from seaboard to seaboard in carload lots. Boston gets her pork from Illinois and her beans from California. I believe 90 per cent of all inland as well as maritime shipments are either in whole or in part interstate or foreign commerce.

Now, in the regulation of this growing condition, what is the Federal power?

Not only to regulate commerce between the States, but to prohibit the shipment of such as Congress may deem against public morals or public policy. Thus lottery tickets, obscene literature, impure foods, diseased live stock, infected individuals and patent medicines are already under the ban by express statutory enact-

ment. The right to regulate includes the right to prohibit. (In Re Van Vleet, 43 Fed., 763; U. S. vs. Popper, 98 Fed., 424.)

The right to regulate does not mean the commodity transported, but the vehicle that is used is also subjected to Federal control. As was said by Judge Cochran in United States vs. Adams (152 Fed., 743), that interstate commerce "is the passage of property, persons and messages from within one State to within another State. It has certain adjuncts, towit, the persons corporate or natural and their employes that effectuate it, including the ways artificial and natural over which and the instrumentalities by which the passage is made and the charges made for the service rendered * * * and Congress is authorized to regulate the adjuncts as well as the commerce itself." Or as Senator Knox expressed it the other day, when he asserted that Congress had the right to regulate not only the commodity in transit, but to regulate "the instrumentalities of said commerce animate or inanimate." The extent of the meaning of the word "regulate" is sufficient. The Supreme Court, through Chief Justice Marshall, said the "power complete within itself may be exercised to the utmost extent and acknowledges no limitations other than are prescribed by the Constitution." "It does not stop," says Chief Justice Story, in U. S. vs. Coombs, 12 Peters, 72, "at the mere boundary line of the State, nor is it confined to acts done on the water or in necessary course of the navigation thereof, it extends to such acts done on land which interfere with, obstruct or prevent the exercise of the power to regulate commerce and navigation with foreign nations or among the States."

Thus a jerk-water road with termini within the boundaries of a single country, if it carries a postal card its length on its journey to another State, can be placed under the exclusive jurisdiction of the Federal authorities.

Nor does it end with the vehicle that transports the commodity, but presses forward to every imaginable aid as well as the individuals who operate the same, from president to engine wiper. Congress may regulate the bridges upon which it crosses (Penn vs. Baltimore, 37 Fed., 129), the wharves, the ferries, the warehouses, the grain elevators, the canals, the navigable streams, harbors, telegraphs, telephones, stock yards, sleeping cars, all employes, conductors, engineers, pilots, the lights and signals, in fact, everything down to the method of driving the spike in the rail. (The Hazel Kirke, 25 Fed., 607; The City of Salem, 37 Fed., 850; Stockyon vs. Baltimore, 32 Fed., 16; Penn vs. Baltimore, 37 Fed., 129; Parkersburg vs. Parkersburg, 107 U. S., 702; California vs. Central Pacific, 127 U. S., 139; People vs. Miller, 178 N. Y., 196; U.

S. vs. Adair, 152 Fed., 122.) And with the anti-trust law vitalized by successful prosecutions, and expanded by enthusiastic public servants, it need not stop at the old limitation that while the power was plenary over the product in transit its production and preparation for the interstate market was no concern of the national law, and may seize upon the power to regulate Paul who plants, Apollo who waters, and God who gives the increase. With the suggestion from exalted sources that all State regulation of the instrumentalities of interstate commerce be canceled by Congress declaring them post roads, and thereby take exclusive jurisdiction over same, we might reason out for the benefit of our "good roads" reformers uniformity of legislation by having Congress to declare the dirt roads used in rural mail routes post roads also, and to the utmost secure Federal aid in construction and exclusive Federal control.

With the further suggestion that Congress pass a comprehensive Federal incorporation act authorizing the creation of national corporations to engage in interstate commerce, or one of the adjuncts, with exclusive Federal regulation and control, relieving them of State supervision, State control and State taxation, and remembering the rule in Farmers and Mechanics National Bank vs. Dearing (Otto, page 29), which says of Federal corporations "that they are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to the end. Of the degree of necessity which existed for creating them, Congress is the sole judge.

"And being the means brought in existence for the purpose and intended to be so employed, the State can exercise no control over them, nor in any wise affect their operation except in so far as Congress may see proper to permit. Anything beyond this is an 'abuse, because it is the usurpation of power which a single State can not give.'"

If a creature of the State of New Jersey, acting indirectly through a creature of the State of Missouri, can be able to substantially defy the State courts, and violate without any great danger of punishment, State laws, what sort of a soulless monster would a Federal corporation be that could say to the sovereign in whose jurisdiction it is planted, "Touch me not, I am national in my character,—my person is sacred."

Thus we can see, by making things really uniform, is the final elimination of State lines, State sovereignty and local self-government.

Entertaining these views, I am opposed to uniform legislation, and crave variety, believing the good will finally live, the evil die.

We may stifle ourselves with too much regulation and hamper our liberty with endless and useless State laws. But these evils we know, and the remedy we know and they are still within our grasp. To solve the problems of the future, let the forty-six parliaments experiment with novel laws and the forty-six courts define, limit and enforce them; the true solution will come and, when once found, will become general by nature of its intrinsic vitality.

Uniformity of legislation is the basis of Federal centralization, the destruction of local expansion and growth, the death of individualism, the creator of a national sameness that threatens a stagnant maturity, until, like the Chinese, we become a civilization whose development is certainly and perhaps eternally arrested.

I believe with Thomas Jefferson that "The Federal judiciary of the United States is the subtle corps of sappers and miners constantly working underground to mine the foundation of the confederated fabric," and that "They are all construing our Constitution from a co-ordination of general and special government to a general and supreme one alone."

I am one who, with all respect for the patriotic individuals who occupy the Federal bench, but a disbeliever in the system, insist that the Federal courts, in their *nisi prius* jurisdiction should be limited more and more, and that the enforcement of Federal statutes be lodged as much as possible in the State courts.

I believe that the agitation of uniform laws is a subtle attack upon the doctrine of home rule, and believe that instead of discouraging variety, that localities should be encouraged, and the right to legislate for themselves enlarged and made more certain. It will tend to lessen the avalanche of legislation that now envelopes us, all tending to centralization, which is paternalism, which is national socialism, which is another name for slavery.

"The function of democracy in the past was that of putting a limit upon the power of kings. The function of the true democracy of the future will be that of putting a limit to the power of parliaments."

THE HONOR OF THE BAR.

A PAPER READ BEFORE THE

TEXAS BAR ASSOCIATION

BY

MR. THOMAS H. FRANKLIN,
OF SAN ANTONIO, TEXAS.

"This high court doth adjudge:

"1. That the Lord Viscount St. Alban, Lord Chancellor of England, shall undergo fine and ransom of forty thousand pounds.

"2. That he shall be imprisoned in the Tower during the King's pleasure.

"3. That he shall ever be incapable of an office, place or employment in the State or Commonwealth.

"4. That he shall never sit in Parliament, nor come within the verge of the court."

Thus reads the sentence that branded Francis Bacon as a bribe-taker, set the seal of infamy upon his brow, tore from him his chancellor's robes and clothed him in a culprit's garb.

Lawyer, chancellor, logician, philosopher, writer, he, years before, proudly had declared, "I have taken all knowledge to be my province," and now, dishonored and disgraced, stripped of the power he loved so well, and for which he had fawned and flattered, cringed to enemies and betrayed friends, he stood a towering intellect but none the less a self-confessed and judicially condemned criminal.

That a man of Bacon's marked ability, great learning, tremendous energy, high birth and gentle breeding, should, in the fullness of his powers and the height of his fame have disgraced the judicial ermine and become a taker of bribes is one of the almost inexplicable facts of history. Much has been written concerning it. He has been pilloried by the caustic wit of Pope, condemned in the polished criticism of Macaulay, and much learning has been devoted to a search for justification or excuse for his conduct.

It has been asserted that so extensive was his learning and so overweaning his vanity he saw no wrong in his misconduct, and that whilst he acted crime, he did not think it. The fallacy of this reasoning is transparent. As well might it be said that a woman, "dowered with the fatal heritage of beauty" and gifted intellectually beyond the ordinary run of her sex, could prostitute her person for gain and yet remain virtuous.

It has been said that the charges were originally preferred by suitors against whom judgments had been rendered and that their testimony should not be credited, but to this Bacon's confession of guilt gives ample answer. Besides it is not to be expected that those who paid for judicial favors received would ever proclaim themselves bribe-givers in order to denounce the bribe-taker, and it is to the disappointed bribe-giver that we must look for evidence of a court's corruption.

The specious plea has been made that whilst the bribes were taken they did not influence the chancellor's decisions, but this is only to assert that it is no offense to sell judicial favors if the consideration is accepted but the favors are not granted.

To accept a bribe is an offense and the culprit does himself no honor when he asserts that he broke faith with his purchaser, kept the bribe, but did not deliver the goods. When the bribe is taken, who can say that the bribe-taker has not carried out his part of the contract? Shall it be left to the judge whose favors have been sold to say, "I did not permit the bribe to influence my judicial conscience"?

The only explanation of Bacon's conduct is to be found in the vicious sentiment prevailing among the nobility in the age in which he lived, but this furnishes no justification for his acts and but small excuse for his weakness.

It is certain that he lived in a profligate age. The favors of the sovereign were sought by flattery and bought with gifts. Monopolies, burdensome to the people, were freely given in order that the revenues of the crown might be increased and court favorites rewarded; courtiers near the throne openly sold their influence and the general moral tone was low. A court of chancery was then, indeed, a court of grace, and the chancellor in awarding relief may have considered himself as speaking for the king, and seen but little wrong in following the example of his sovereign lord in receiving gifts from those who sued before him.

That Bacon's ethical vision was obscured by the moral sentiment

of the society in which he moved is shown in the remarkable note he addressed to the king before his conviction. He says in part:

"There be three degrees or cases of bribery charged or supposed in a judge:

"1. The first, of bargain or contract to pervert justice, pendente lite.

"2. The second, where the judge conceives the cause to be at an end by the information of the party, or otherwise, and useth not such diligence as he ought to inquire of it.

"3. And the third, when the cause is really ended and it is sine fraude, without relation to any precedent promise.

"For the first of them I take myself to be as innocent as any born upon Innocents' Day in my heart.

"For the second, I doubt, in some particulars, I may be faulty.

"And for the last, I conceive it to be no fault, but therein I desire to be better informed, that I may be twice penitent, once for the fact and again for the error. For I would rather be a briber than a defender of bribes."

This is quibbling over the elements of a wrong and trifling with the virtue of a court.

In yet another note to the sovereign he makes the plea that for favors received he made no return, asserting that he had never "taken reward to prevent justice, however, he might be frail and partake of the abuse of the time."

Whilst the moral sentiment of the times was by no means elevated, yet that a chancellor was selected as a shining mark for prosecution and punishment shows that even then it was understood that the fountain head of justice could not be polluted without danger to the State, and Bacon was too profound a lawyer and accomplished a logician to long seek to deceive himself or others by specious reasoning as to the character of his offense, and we finally find him expressing his recognition of the justice of his sentence in these remarkable words:

"I was the justest judge that was in England these fifty years. But it was the justest censure in Parliament that was these two hundred years."

Here he condenses in two sentences the sentiment that there are certain judicial proprieties that must be respected by bench and bar, and that a disregard of them is a gross wrong requiring prompt condemnation.

This is but another way of saying that there is a moral standard to which bench and bar must conform and that a disregard of the

standard is an assault on the honor of the bar deserving the most serious disapproval. It is practically impossible to define the standard or to give to it expression in words. The most we can say is that the rule of conduct which meets the approval of the trained, cultivated and honest legal conscience is the safest guide for judge and lawyer, and that a violation of such rule offends the honor of the bar.

I have selected Bacon as an example of the dire results that follow to the lawyer who does not guard with zealous care the honor of the bar, because "the example of very abandoned men injures public morality less than the example of men in whom vice has not yet extinguished all good qualities." We do not expect virtue in the courtesan nor honor in the thief. There may be honor among thieves, but it is not of the character to which honest men aspire.

Bacon's great learning and splendid achievements make us loath to condemn him and yet nothing that he has done or said has wiped the tarnish of guilt from his character, and his misconduct stands out more vividly than do his many accomplishments. Bacon, the bribe-taker, is better known than Bacon, the founder of a new philosophy.

When we seek to find the reason for this, we do not have far to search. A man's character is the total of all of his thoughts, acts and words, and no man lives long before the dominant note in his life is struck, and by it he is ultimately measured. Bacon loved power, he loved the outward show of power, he loved wealth and the meretricious externals of wealth, and he sold the real power that would have been his by virtue of his splendid attainments for the gaudy outward evidence of eminence. To him the robe of office was more than the high and just performance of its duties, the obsequious smile of the flatterer more than the consciousness of duty well done.

"Men are made up of professions, gifts and talents; and also of themselves," and, says a learned writer, there was much of self in Bacon.

When, therefore, I say that the rule of conduct approved by the legal conscience is the standard by which lawyers should measure their actions, I mean that conscience in which the dominant note is honesty of the highest sort.

The lawyer's life touches the life of the public in this government at almost every point. He is a lawmaker. He is found in the majority in the National Congress and probably in every State

Legislature. He moulds largely public sentiment by the manner of his living, his public speeches and his writings to the press. His opinions on public questions are sought by client, friend and neighbor, and are given weight and consideration. Into his hands are generally committed the execution of the laws, for he is frequently the nation's executive, and often heads the administration of the different States.

He is not only an executive and administrative force, but also an expounder of the laws, for as a judge he determines the meaning of the law and puts into execution his decisions, and as a writer on legal subjects he aids to build up a judicial sentiment that gives color to the law in its practical application and directs the course of judicial declarations.

The primal governmental force in a republic is public sentiment. This force does not always move smoothly. It is sometimes so bound by the conservatism of custom and the lethargy of wealth that it only frees itself from its bonds by rending them apart by a great convulsive effort.

A people feel long before they think, and think long before they speak, and when long pent feeling urges slumbering thought to uncertain mutterings a cry goes forth for some master mind to fund the feeling and voice the thought and make the multitude understand themselves. This call is not to the philosopher, for men die while he ponders; nor to the minister, for his intelligence is cramped by a creed; nor to the man of business, for his horizon is bounded by the material; nor to the statesman, for he always suffers somewhat from the timidity of the politician; nor to the historian, for he is a recorder of events; nor to the lawyer, for he is weighted with the conservatism of ages and measures his imagination with a logical yard stick; but it is to the poet and the orator, for the soul of the martyr is theirs, and theirs the second sight of the seer and the clearness of vision to see the beauty of the infinite shine through and glorify the finite. And so to the poet the call is made:

"Arouse, let thy soul break in music thunder,
Let loose the ocean that is in thee pent,
Pour forth thy hope, thy fear, thy love, thy wonder,
And tell the age what all its signs have meant;
Sit thou enthroned where the poet's mountain,
Above the thunder lifts its silent peak,
And roll thy songs down like a gathering fountain,
That all may drink and find the rest they seek;

Sing, there shall silence grow in earth and heaven,
A silence of deep awe and wondering,
And listening gladly bend the angels even,
To hear a mortal like an angel sing."

And to the orator the call is made: Go ye among the people; sit by their firesides, walk with them beneath the forest trees, follow them as they turn the rich furrows in their fertile fields, worship with them in the cross-road church, dance with them in their village halls, listen to the trembling words of love by youth to maiden spoken, meet with them in the turmoil and strife of business and linger in the evening glow with those whose hair is touched with silver and whose eyes are dimming in the shadow of the final night, and, finally, go with them to that hallowed spot so sweetly called "God's Acre," and bow with them in grief over those narrow strips of soil that are all of this vast world the dead may claim. And when you have done all this, then speak and tell the world the meaning of its thoughts. Speak as a prophet not as a phrase-monger—

"For men in earnest have no time to waste
In patching fig leaves for the naked truth."

Speak as one who has found the soul in human thought and heard the whisperings of God in the murmurings of man. And the poet will sing and his song will pulse with the heart beats of humanity and will give forth a light that will illumine the past and the present and shine far into the future; and the orator will speak and his words will come fresh forged and hot from the furnace of truth and burn into the conscience of a listening world. Then, indeed, will the voice of the people be the voice of the ever living God, for they will understand themselves and brooding thought will take form in concrete action and an epoch be marked in the life of civilization.

To few, indeed, is this great mission granted and they are God's elect and carry evermore His warrant in their hands and their glory is a glory that comes from above, and whether they win a victor's crown or gain a martyr's cross they will ever fill an undying place in the hearts and memories of men.

When, however, the point of action is reached and the method is to be determined for the carrying out of the people's demands, it is to the lawyer that the practical work is committed. He it is who must determine in what way and to what extent, under a gov-

ernment of law, the demands may be met and worked into accomplishment. In the determination of such momentous questions there is one safe guide for his judgment and that is the honor of the bar.

As society has become more complex the field of a lawyer's activity has widened. He is no longer a mere legal adviser of clients and an advocate in litigated cases. He now appears before legislative bodies as the representative of vast corporate wealth; he is the administrative head of public service corporations; he represents special interests before commissions having control of public freight and passenger carriers; he arbitrates disputes between labor and capital; he guards the destinies of nations in conferences that may result in peace or war; he advises as to the formation of consolidations of capital that may prove public benefits by the creation of new values or become menaces to the people by the cornering of markets.

As these new responsibilities have fallen upon him the delicacy of his relation to his client has become more pronounced and the difficulty of differentiating between his duty to his employer and his obligations of citizenship has greatly increased. He can not say: "My sole obligation is to my immediate client"; he can not bury his duty as a citizen in his contract of attorneyship; he can not limit his vision by the wants of his client and blind himself to his civic responsibilities. He can not sell his individual conscience to a corporate master without unfitting himself for citizenship and submitting to all of the ignominy of such slavery. He can not renounce his freedom of individual thought and speech and be true to the honor of the bar.

The delicacy of one of the services frequently rendered by the lawyer of the present day in representing a client before a legislative body is illustrated by an opinion of the Supreme Court of the United States rendered over thirty years ago when many of the dangers now confronting us had not assumed their present proportions, and, at the risk of trespassing on your time, I shall quote freely therefrom, for there is much in it commanding consideration.

In the case of Trist vs. Childs, the question arose as to the validity of a contract entered into between Trist and Childs whereby Childs had agreed to prosecute as agent and attorney for Trist, a claim submitted to Congress for compensation for services rendered by the latter touching the treaty of Guadalupe Hidalgo. Childs' compensation was dependent upon his success in securing

the allowance of the claim. In passing upon this question the court says:

"We entertain no doubt that in such cases, as under all other circumstances, an agreement, expressed or implied, for purely professional services, is valid. Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments and submitting them orally or in writing to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable. But such services are separated by a broad line of demarcation from personal solicitation, and the other means and appliances which the correspondence shows were resorted to in this case. * * *

"The foundation of a republic is the virtue of its citizens. They are at once sovereigns and subjects. As the foundation is undermined, the structure is weakened. When it is destroyed the fabric must fall. Such is the voice of universal history. The theory of our government is that all public stations are trusts and that those clothed with them are to be animated in the discharge of their duties solely by consideration of right, justice and the public good. They are never to descend to a lower plane. But there is a correlative duty resting upon the citizen. In his intercourse with those in authority, whether executive or legislative, touching the performance of their functions, he is bound to exhibit truth, frankness and integrity. Any departure from the line of rectitude in such cases is not only bad morals but involves public wrong. * * *

"If any of the great corporations of the country were to hire adventurers who make market of themselves * * * to procure the passage of a general law with a view to the promotion of their private interests, the moral sense of every right-minded man would instinctively denounce the employer and employed as steeped in corruption, and the employment as infamous.

"If the instances were numerous, open and tolerated, they would be regarded as measuring the decay of the public morals and the degeneracy of the times. No prophetic spirit would be needed to foretell the consequences near at hand. The same thing in lesser legislation, if not so prolific of alarming evils, is not less vicious in itself, nor less to be condemned. The vital principle of both is the same. The evils of the latter are of sufficient magni-

tude to invite the most serious consideration. The prohibition of the law rests upon a solid foundation. * * * To legalize the traffic of such service would open a door at which fraud and falsehood would not fail to enter and make themselves felt at every accessible point. It would invite their presence and offer them a premium. If the tempted agent be corrupt himself, and disposed to corrupt others, the transition requires but a single step. He has the means in his hands, with every facility and a strong incentive to use them. The widespread suspicion which prevails and charges openly made and hardly denied, lead to the conclusion that such events are not of rare occurrence. Where the avarice of the agent is inflamed with a hope of a reward, contingent upon success, and to be graduated by a percentage upon the amount appropriated, the danger of tampering in its worst form is greatly increased.

"It is by reason of these things that the law is as it is upon the subject. It will not allow either party to be led into temptation where the thing to be guarded against is so deleterious to private morals and so injurious to the public welfare.

"We have said that for professional service in this connection a just compensation may be recovered. But, where they are blended and confused with those which are forbidden, the whole is a unit and indivisible. That which is bad destroys that which is good, and they perish together.

"The elder agent in this case is represented to have been a lawyer of ability and high character. The appellee (Childs) is said to be equally worthy. This can make no difference as to the legal principles we have considered, nor in their application to the case in hand. The law is no respecter of persons."

These words coming from the mouth of the highest court in the Union show how high is held the honor of the bar by that august tribunal.

Whilst the statement of the court that there is a broad distinction between profession services proper and lobbying, is theoretically correct, in practical application the line of demarcation is frequently found to be shadowy.

Legislation seriously affecting a client's interest may be pending; it may have been prompted by other than patriotic motives; it may be pushed by devious means; but it may embody much needed public reforms. A client, angered by what he deems an unjust assault on his property rights, demands that his attorney shall throw the weight of his character, his learning and his influence against the passage of the law, in addition to making an

open argument before the appropriate committees in opposition to its enactment. The law, in the opinion of the attorney, may be one that is demanded in the interests of the public; but its constitutionality is questionable, or in the form presented it is objectionable. The propriety of the lawyer submitting arguments on the constitutional question or for the expunging of the objectionable features will not be questioned. But will he uphold the honor of the bar if, believing the law to be both constitutional and unobjectionable, yet, at the bidding of his client and for the consideration of a fee, he arrays his learning and his character against its passage, and uses his personal influence with legislators to persuade them from their duties as representatives of their constituencies? Unless the honor of the bar is a mere expression, he would grievously assail it if he so bartered his conscience for a fee.

In the life of the State, each age brings its own political and social problems. We are today confronting the most serious one we have been called upon to face since the Nation's birth, not excepting our Civil War, and that is: Shall corporate wealth control our government and corrupt our people?

A corporation is the creature of the State. It has only such powers as is granted to it by the sovereignty. By fiction of law it is in some legal aspects a citizen, but the voting franchise has never been conferred upon it, and any corporate effort to control legislation is the attempted exercise of a power not conferred by its charter. As a practical fact, however, the corporation is affected by legislation, and it has been and is an active worker before legislative bodies. The evils growing out of this have become so pronounced that the demand for stringent, repressive legislation has grown insistent, and the corporate lobbyists have made themselves so objectionable that their power to accomplish their employer's will has been considerably impaired.

The corporations, however, have not ceased their efforts to get in a controlling position in our government, but their line of attack has changed. They are now seeking to debauch the individual citizen so as to mould public sentiment in their interest. Their stocks are used in charitable bequests, and the youth of the country educated in institutions founded on or supported by donations made by the so-called "Captains of Industry." Financial freebooters are pretentiously taking the public into their confidence, and our illustrated magazines are filled with nauseating stories of the winning personality of some Wall Street adventurer. We are informed that a moneyed great one whose road to wealth is lined with wreckage of the rights of others never fails to kiss his

wife at parting, and that he breakfasts in Jeffersonian simplicity on bacon and eggs, served in a mansion that has cost several millions of dollars. The barber who shaves the chin of a multi-millionaire is accorded a published interview and informs the public of the extreme wiriness of his patron's beard, and announces as the result of his tonsorial experience with many dollared men that great financiers have hirsute appendanges of unusual stiffness.

Railroad magnates who formerly stalked so proudly that they could scarcely see the soil on which they trod now suddenly find that they have grievously erred in the past and pray the government to kindly take them in its broad arms and teach them how to honestly conduct the transportation business; provided, of course, invested wealth is not destroyed and the fortunes acquired by them not disturbed—how easy it is to bend the knee if "thrift may follow fawning."

The vastness of the interests of the powerful corporations of the country and the number of the States in which they transact business, the diversity and extent of the legislation affecting them, and the litigation in which they are more or less constantly involved, necessitates the employment of a large body of lawyers. The influence which this number of members of the learned profession who are in constant contact with the people may have on public sentiment can not be estimated. When we consider that it is frequently asserted and seldom denied that a few men are in practical control of the great transportation interests of the country, and that they are closely allied to, if not in control of, the most powerful commercial organization that ever existed, and that the ramifications of these tremendous enterprises extend in every direction, affecting the citizens in many ways, we can form some idea of the danger to the commonwealth if the bar ever lowers its standard of ethics and the learning that should be devoted to the protection of life, liberty and property, and a sustaining of the true principles of government is applied solely to the advancement of the interest of the powerful few and the acquisition of wealth and power through their favor. The temptation to use the influence of the lawyer to accomplish corporate aggrandizement is constantly present with the corporations. The pressure upon the lawyer to render obedience to his clients' wishes and advance their interests, though silent, is continuous. That there is a pressure will hardly be denied. If the lawyers be debauched, if their code of ethics be lowered, if the honor of the bar be not upheld by them at all times, and under all circumstances; if greed for gold or ambition for power outweigh their duty to their profes-

sion and their people, then there will be a force advancing corporate interests that will give cause for alarm to all liberty-loving people.

Whatever legislation there may be enacted for the government and control of corporations must be enforced through the courts. If the corporations can control the courts, legal enactments may be shorn of strength by judicial constructions; if the judiciary be kept pure, the courts will stand between the people and corporate wrongs, and the power of money will not avail to crush the rights of the humblest citizen. It is from the ranks of the lawyers that judges are selected, and, if the moral tone of the bar is lowered, the very source of justice will be corrupted. Who can doubt that a debauched public sentiment in this country would produce chancellors who would justify themselves in the taking of gifts from litigants by the pitiable plea of Bacon, that they had not permitted "the rewards to pervert justice"? Or, who would use the power of their office in the interest of favored suitors? Or whose judicial course would be marked by conduct for which they would blush if their standard had not been lowered by a debased conception of the honor of the bar by the lawyers practicing before them? The growing complexity of our civilization is likewise extending the exercise of the duties and powers of the courts and they are constantly confronted with problems that touch both the State and National life. Under their power to appoint receivers, they may take under control and management for years public service corporations; they may enjoin the levy of taxes, and thus embarrass the government; they may stop, by injunction, threatened riots or permit loss of life and destruction of property by hesitation when prompt action is demanded; they may settle political questions by determining the constitutionality of a law; they narrow or broaden their own jurisdiction by the construction of a statute; they build up precedents which affect the meaning of new legislation; they stay by their writs the regulation of freight and passenger rates fixed by governmental commissions controlling common carriers; judges holding life terms are tempted to exhibit their powers to the extent of tyranny, whilst those elected for specified terms are ever in danger from the subtle seduction that comes from a desire to cultivate the popularity they may deem necessary to their retention in office. More than ever before, therefore, the honor of the bar should be the court's companion, and close consultation should be had with it so that justice, pure and undefiled, should alone find place in every act done or judgment rendered by a chancellor or judge.

The approach of wrong is noiseless; the tempter wears felt-soled shoes, speaks in whispers and is disguised in virtue's garb. When, therefore, a corporate client seeks to silence its attorney's voice on public questions, the lawyer must expect to hear much of the duty of lawyer to client, and, should he succumb to the temptation, he will shelter under the same phrase.

The extent of such duty must be determined at last by each of us for himself, but, as a profession, we owe it to ourselves and to each other to place the honor of the bar so high that no one of us should hesitate in decision nor look to other guide for our conduct.

The lawyer then becomes the highest type of citizen, his influence weighs ever for good, and he will stand in the future as he has stood in the past, in the front rank of the defenders of free government, the upholders of the law and the supporters of that justice which demands that its ministers be not only incorruptible but above the suspicion of corruption.

So place the honor of the bar, and he who casts a stain upon it would commit professional suicide and fall so low that no man would award to him respect until he had much repented of his sins and been born anew.

My brothers of the bar, I do not speak in criticism, but I sound a warning.

I have faith in my profession. I am proud of its history and traditions. I have reliance on its honor, and I believe in its integrity, but nations have run the cycle of wealth, corruption, moral and physical decay, and even the pride of past splendid achievements has proven powerless to rouse them to further honorable performance, and what individual can safely say: "I am proof to all temptation"? We must make right-thinking a life habit if we would avoid wrongdoing. No lawyer ever attains any prominence in his profession who does not number corporations among his clients, and to them he owes the same duty as to any other client, but this does not embrace any obligation to bend his judgment on public questions to their will, nor to so mould public sentiment that they may invade the rights that should be preserved to the citizens.

Each life has its great temptations, and there may come to any of us, or all of us, times when we must decide between our duty as citizens and our course with reference to a client's wish. To give obedience to the wish may mean wealth and power, but enslavement of conscience; to refuse may mean poverty, misrepresentation as to our motives, the defeat of honorable ambitions. Then it is that the honor of the bar will call aloud to us—and its

voice will ring out like a trumpet—better the bitter bread of poverty, better to stand the sneers and flings of corporate hate, better the humblest place in the rank of citizens, than to sell conscience for a gaud or to attain place by the barter of your better self.

Woe unto him who then prefers the purple robe of wealth, the gleaming garments of display, to a name unsullied and a conscience clear. Harken to the exultant cry of Demosthenes: "Cattle die, kindred die; we ourselves also die, but the fair fame never dies of him who has earned it."

INSTITUTIONAL CHANGES.

ANNUAL ADDRESS DELIVERED BEFORE THE

TEXAS BAR ASSOCIATION

JULY 3, 1907,

BY

HON. YANCEY LEWIS,
OF DALLAS, TEXAS.

Human government not only exercises powers, but is itself subject to the constant play of various forces. For this reason it is doubtless true that no government except the simplest despotism has ever been correctly described in all its parts, relation and operation. Mr. Blackstone was as well qualified for this work as any of those who have attempted it, but we know that in his description of the apportionment and balances of sovereign authority in England, he fell into great errors, and this, not because of carelessness or intent, but because, while government in England has had an unusual stability and continuity of principle and form, it has been subject during all the years to constant flux and eflux, to contests as to the seat of the sovereign authority, to the shifting thereof, sometimes slow and imperceptible, sometimes violent and rapid, but always, measuring by the slow movements of the centuries, constant. It is, furthermore, probably true that no government has been or can be framed that shall operate in exact accord with the design of its founders; first, because of the imperfections of human speech in expressing the intentions of men, but principally because government is an agency to be adapted to the wonderfully complex, varied and changing social organism wherein necessarily arise conditions that human sagacity can not foresee, and in which perpetually operate educational, religious and economic forces, acting and reacting upon institutions of government as such institutions modify and direct them.

Accordingly, we should expect what historically we know, that

in the history of States their institutional forms tend to change their character and operations; some become atrophied and obsolete; others have undue development; still others are evolved from new and changing conditions. The pure democracy becomes the oligarchy, the oligarchy despotism, or, maybe, by God's kindness or happy accident, the sequence is reversed. A more complex phenomenon, and, therefore, more curious and interesting, is presented when an antagonistic principle of government becomes paramount, but retains and operates through old institutional forms. Illustrations of this phenomena are to be seen in the cases of supposed pure despotisms in which the power of the monarch has come to be subject to the customary law of the palace or the bureaus. Such illustration occurred in the history of Rome when Augustus Cæsar acquired absolute authority, but scrupulously preserved the old forms and offices, and thus, so to speak, ruled despotically but constitutionally. All recall how under his successors the Senate, that in an earlier time had exercised supreme power, and debated and decided the fate of nations, was retained apparently to register the will of imperial masters and to vote them divine honors. Such illustrations are at the present time presented in England, where the King and the House of Lords still remain integral and essential parts of its constitutional system, but neither exercise their full theoretical functions, and in Mexico, where, if information be true, an enlightened and benevolent autocrat administers affairs under cover of Republican forms and written constitutions, not unlike our own. It is interesting to note in this connection that as society progresses the tendency becomes more marked for governmental forms to adhere less distinctly to pure types, as monarchial, oligarchical or democratic, but under constitutions to become composite and to combine apparently inconsistent principles. Thus the English government having both the monarchial and aristocratic elements is, it may well be believed, more republican than the Republic of France, and, because of its more immediate response to the expression of the popular will, more democratic than the United States, which has neither king nor nobles.

In this country we have established government by means of written constitutions. We have erected its departments, outlined their duties and powers, and imposed restrictions and limitations upon their exercise. In these instruments we have made the utmost endeavor to secure precision of language and exactness of purpose. We have adopted as a fundamental rule that the construction of these constitutions is to be uniform; that they are not to mean one thing at one time and another at some subsequent

time, when circumstances seem to make a different meaning desirable. We accept in its fullness the statement, "There is no doctrine which the wit of man has invented more pernicious than the proposition that a constitution may change and alter in its meaning according as there has been a change in enveloping conditions."

Having regard to these fundamental propositions, it is proposed to inquire whether the specific provisions of written constitutions have been in this country sufficient to control the play of forces first alluded to, and to prevent either the atrophy of some of the institutional forms and powers, or the growth of others which, if not unconstitutional, are at least extra-constitutional. That there have been such developments must be clearly affirmed.

ELECTION OF PRESIDENT AND VICE-PRESIDENT.

The first and most distinctive is the difference in the mode in which the President and Vice-President of the United States are actually chosen from the mode contemplated by the Constitution. Thus, the Constitution contemplates that the President shall not be elected by the people directly, but by a body of representatives selected with reference to their ability to make a proper choice; in fact, however, a party convention of delegates unknown to the Constitution makes the selection and the electors merely confirm their nomination. It was intended by the Constitution that the electoral colleges of the several States should meet and deliberate separately and reach independent conclusions, in the belief that by this method cabals and combinations would be prevented and only men of great and established reputations for ability and virtue would be considered, while mediocre men lacking extended reputations would be excluded from the Presidency; and, in this belief, a proposal for a general meeting of the electors from all the States was voted down.

It is known to all that the nominations are, in fact, made in unified conventions composed of delegates from every State and Territory, and instead of men illustrious for their services being chosen, ordinarily it is deemed prudent to nominate men not conspicuous for their talents nor eminent because of their public records. The Constitution provides that "No Senator or Representative or person holding an office of trust or profit under the United States shall be appointed an elector." The object of this provision, of course, is to maintain the separation of the departments of government by freeing the President from any sense of obligation to the members of the House or Senate and to prevent

the selfish interest of the office-holding class from being a factor in the selection of the chief magistrate. But the party conventions, in which the candidates for the Presidency are nominated are usually crowded by the very classes of individuals whom it was the constitutional purpose to exclude from the choice of the President; the spirit of combination is rife and the cabal of a few leaders, or "bosses," frequently determines the result. In view of these consequences, we can understand, even if we do not agree with him, why Mr. Calhoun declared of the present system of selection: "Never was there a scheme better contrived to transfer power from the body of the community to those whose occupation is to get or hold offices, and to merge the contests of party into a mere struggle for the spoils." By it provisions of the Constitution, which were regarded by the convention as of the utmost importance, and which were only adopted after the maturest consideration, have been rendered as obsolete as if they had never been written.

PARTY PLATFORMS.

Closely related to the action of the party convention in making nominations for the presidential office, and illustrating still another phase of extra-constitutional growth, is the development of the party platform as a higher law controlling in conscience and in honor members of Congress and of the State Legislature in the discharge of their official functions. The trickery, the evasion and the disregard of party declarations has been much considered, sometimes humorously, and sometimes seriously; but it has not always been distinctly perceived that the power of party conventions by their declarations, to forecast and control legislative action, involves a serious change of constitutional functions and is in truth the development of a new governmental institution regulating and controlling to the extent that its promulgations have effect, the action of the constitutional agencies. Yet it is clearly true that to the extent that the party convention is able to indicate the details of legislative action and to control the legislative mind, it becomes, in itself, the seat of legislative power, while the official bodies merely register the will of a controlling authority superior to themselves, though unknown to the law.

It is further to be observed that the declarations made by the National Convention dictate the sentiment of the combined party convention to all Senators and Representatives of the States of the same party faith, thus breaking down State lines and centralizing, as has been correctly stated, the action of the government

of the Union and subordinating all State and district action to its dominating influence, so that while, theoretically, the Senators are instructed by the several States and Representatives by their respective constituencies, in point of fact they are, as to the great majority of controverted matters, controlled neither by their own judgments nor by their respective States or constituencies, but by the action of a general body, in effect superior to them. As an agency of centralization, it must be admitted that the general National Convention holds first place.

The fact is made more clear when it is remembered that in the enactment of laws by the Congress, the States in one branch are equal in voting strength; that this equality is the one thing not subject to amendment, and that a bill to become a law must have a majority of votes representing numbers and a majority of votes representing States, without regard to numbers; while in the convention the equality of the States is practically ignored, and the power of numbers is controlling. Under the Constitution a majority of States having a third of the total population can prevent legislation, while in the convention a third of the States having a majority of population can declare the party law which shall control the action of the representatives.

When the State convention declares its platform of State policies it also substitutes its judgment for the judgment of the Legislature, and likewise obliterates district lines as the source of instruction to the representative. The right of the party, through its platform expressions, to control the legislator of the same faith in the discharge of his constitutional functions, has been pressed far; in our Legislature standing rules give preference over all other bills to the consideration of the particular measures embodying the platform demands. The argument is customarily made, and usually with controlling force, that the individual legislator should vote in accord with the party declaration. These views have been so long recognized and so customarily acted upon that it is difficult to recall that the party convention is an institutional growth and its powers extra-constitutional.

THE PARTY BOSS.

As presenting still another phase of institutional, if not of constitutional development, the party boss must be considered. We all know him. We are all familiar with his genesis. It is not unrelated to the development heretofore considered. Usually his seat of power is one of the large cities, though his type is not lacking

in smaller communities. With utter absence of political conviction, or regard for political principle, he takes the name and professes allegiance to one or the other of the great parties. Establishing relations with those sections of the community which feel themselves especially the objects of the law's control or antagonism, the liquor interests, the gamblers, the sports, the criminal and semi-criminal classes, he organizes and combines these into a solid nucleus, directed and controlled by himself. With this nucleus it is easy to offer inducements to the ambitious, and to effect combinations with business interests desiring protection or wishing to escape just obligations, or seeking to acquire public rights and franchises. Power grows by what it feeds upon. The solidarity of the organization enables its head to lay hold of the regular machinery of municipal government; to control official places; to reward followers; to award contracts to faithful and interested friends; to punish obstinate or troublesome enemies; to derive large revenues from criminal and semi-criminal classes for unlawful exemptions from punishment, and thus to make it measurably true that the constituted agencies which the State has established for protection against wrongdoers are themselves controlled and directed by the very class against whom, theoretically, they are supposed to operate. When the head of the organization thus built up is a man of large capacity for intrigue and combinations, he moves to the acquisition of the party machinery of the State and through it to the control of the powers of the State government, and to a consequent enlargement of his own power to reward friends, to punish enemies and to promote or defeat ambitions, and thus to extend his own authority. When he reaches this point, if simply avaricious, he contents himself with the acquisition of wealth; if ambitious, he seeks high official station, and thus clothes actual power with a semblance of lawfulness.

To regard him, however, as not holding official place, but as naming and directing the councilmen of the cities, dictating appointments, procuring or defeating municipal legislation, controlling the State Legislature and guiding its proceedings, is to enable a clearer perception of the existence of a governmental force, actual, real, potential, not recognized by law, and lying outside of organic provisions, but ruling in its most literal sense, through the acts and forms of constituted authority dominated by it. So distinctly is this force recognized by experienced lobbyists at Washington and some of the State capitals that often they deem it waste of time to seek to enlist members from some boss's "sphere of influence," but proceed at once to find the means of interesting

and enlisting him, knowing when this is done the members may be relied upon. When the party boss reaches this point, he is usually able to name and control the delegates of his party from his State to the National Convention; and it has more than once occurred that a combination of a few of these great oligarchs has been able to make the nomination for the presidential office and to shape the platform with the consequences that have been noticed, of directing the representatives in the discharge of their constitutional functions, and of subjecting States and districts to the action of unified convention. The evolution of the boss is the most significant and evil portent in our national life. His development is an institutional growth, but the growth is cancerous and deadly.

EXPANSION OF THE POWER OF THE SPEAKER.

Another institutional change is presented in the enlargement of the power of the Speaker in the Lower House of Congress. This officer is mentioned but once in the Constitution, and then in the clause providing "The House of Representatives shall choose their Speaker and other officers." It is a fundamental rule of construction of the words used in the Constitution, that where they had come to have a defined and accepted meaning in the common law of England at the time of the formation of the Constitution, they should have the same meaning here so far as the difference in the principles of our government will permit. To the extent that this rule might operate to define the powers and prescribe the duties of the presiding officer of the House of Representatives by analogy to the powers and duties of the Speaker of the House of Commons, it would tend to make him a judicial officer ruling with judicial impartiality, the organ of the House's will, but not its master; but through the existence and power of committees (nowhere mentioned in the Constitution) to deal with the subject matter of legislation and the authority of the Speaker under the rules of the House to name the members of such committees it has come to pass that the Speaker is able to, and does, usually, constitute the committees with reference to the enactment into laws of his own views, by putting on them members who are in accord with his opinions, and who thus reflect in legislation not the views of the House, but of its presiding officer. This fact, together with the arbitrary recognition or refusal of recognition by the Speaker of members desiring to address the House, and his power as head of the Committee on Rules to prevent or retard the consideration of measures, has led to a vast increase in the power and responsi-

bility of the Speaker, and a corresponding decline in the importance of the House as a legislative body. The inquiry has come to be, not what will the House do, but what will the Speaker do? As a consequence, the House has ceased to be a deliberative body. Its discussions have degenerated in character, and it rarely debates in any true sense the particular question that is under consideration. The members, recognizing the futility of such discussion, ordinarily avail themselves of the time set apart for debate for the expression of views with reference to any irrelevant matter as to which they may desire to bring their opinions to the attention of their constituents. The real work of legislation is done by the majority sections of the different committees, or, as Justice Brewer observes, "It is profoundly true that congressional legislation today is not legislation by the representatives of the people, but by committees of such representatives"; and it would seem accurate to add "formed by the Speaker with a view to the attainment of particular ends and policies." Mr. Bryce, an acute but not an unsympathetic observer, refers to the power of the Speaker as "Power which in the hands of a capable and ambitious man becomes so far reaching that it is no exaggeration to call him the second, if not the first, political figure in the United States, with an influence upon the fortunes of men and the course of domestic events superior in ordinary times to the President's, although shorter in its duration and less patent to the world."

DIRECT LEGISLATION.

It has doubtless been noted that in each of the institutional developments to which I have referred the representative principle has suffered most. This principle was impaired in taking the choice of the President and Vice-President from selected representatives or electors; it was further weakened by the authority of the party platform to control the acts and judgment of the congressmen or of the representatives in the State Legislature; it was more greviously wounded by the power of the party boss to control the election of representatives, who, recognizing that their promotion was due to him rather than to the people, were subjected to his direction. It has been greatly affected in the National Congress by the increase in the power of the Speaker. It has undoubtedly suffered further impairment by the action of the judiciary in exercising the power to hold for naught an act of legislation, adjudged by it to be in conflict with the Constitution. It is not proposed to revive the controversy, whether this power was

given originally by the Constitutions, State and Federal. It must be admitted that it is difficult to reconcile the absolute equality and co-ordination of the several departments with a theory under which in practical result, though not in terms, the action of the one is subjected to the supervision of the other because of its ability successfully to oppose its judgment of what the Constitution means against the judgment of the other two branches. It is instructive to recall that at one time the controversy over this question raged with great intensity; that in some of the States judges were impeached for assuming to declare an act of legislation unconstitutional; that in another they were defeated for re-election; that in others they were subjected to impeachment, but acquitted; that in still another the court, asserting the power to declare an act unconstitutional, was sought to be relieved of its functions by legislative enactment and a new tribunal established, with the result that for awhile two courts assumed to exercise the supreme judicial authority; that when finally Mr. Marshall gave the weight of his great office and of his extraordinary ability to the doctrine as it is now received, his views did not have immediate acceptance, but were sharply antagonized. Mr. Jefferson, his opponent upon many points, criticized his announcement with great warmth and feeling, and declared that his arguments had been unanswerably refuted, if the human reason was capable of refuting any given proposition. The doctrine, however, has been so long accepted and acted upon; it is so thoroughly wrought into the jurisprudence of the country; the public mind has come to rely with such confidence upon the courts for protection against ill-considered and unconstitutional legislative action, that it may be accepted that if the courts should now conclude that they did not possess this power, the public judgment would at once insist that by appropriate amendments they should be given it. Its exercise, however, it may be asserted with confidence, has unfavorably affected the action of our representative bodies in two ways: It has lessened the sense of legislative responsibility and induced haste and lack of consideration and caution; second, it has sometimes, it may be well believed, caused these bodies to yield to popular feeling or clamor, or to the desire to make individual or party capital, and to pass acts recognized as unconstitutional in the expectation that the courts would prevent their operation.

Whether the developments thus hastily outlined be the cause of a change in the public mind, with reference to some of the most fundamental theories in our institutions now plainly evidenced in the drift from a government of representative majori-

ties to one of popular majorities, from legislation by delegated agents of the people to enactments by the direct will of the people, can not be positively asserted, but it may well be believed that they have contributed to a tendency whose existence may be easily demonstrated. As this suggestion presents the grave and far-reaching inquiry, is the principle of representative government breaking down, and as this may involve the still graver and more fundamental question, is this government to be a constitutional or an absolute democracy, I pray you to consider for a space some significant facts. It will be admitted by all that a Constitution should be a plain declaration of fundamental principles, a delineation of the different departments of government and the expression of such restraints as may be deemed wise upon their exercise of authority and that all matters of policy should be left to the legislative determination; yet, it is notably and universally true that the State Constitutions have exhibited two characteristics in a stronger degree with each passing year, namely, an increasing distrust of the legislative authority and a growing disposition to restrain it by increasing the limitations upon its exercise; and, second, a tendency to incorporate in the Constitution matter which is not fundamental, but is properly the subject of legislation. Early in the century the State Constitutions averaged six or eight pages in length; now they contain thirty or forty pages. On the other hand, as if responsive to this distrust of themselves, the Legislatures show an increasing inclination to submit to direct vote the determination of legislative questions; and this in the face of the settled maxims of constitutional law that the power conferred upon the Legislature to make laws can not be delegated by that department to any other body or authority. Thus, "In New York the Legislature," says Mr. Bryce, "which has been long distracted and perplexed by the question whether articles made by the convicts in the State prisons should be allowed to be sold, recently resolved to invite the opinion of the multitude, and accordingly passed an act under which the question was voted on over the whole State, proposing after having obtained the people's judgment in this manner, to pass a statute in conformity with their wishes." The same author notes that as far back as 1843 Wisconsin referred it to the voters to decide whether or not banks should be chartered; and Minnesota declared that a railroad law of a certain class should take effect only when submitted to and ratified by a majority of the electors. By an amendment to its Constitution at a later time the same State required the appropriation of money belonging to certain funds to be approved by a majority of

the electors of the State. So in a number of States debt beyond a certain specified amount can not be contracted except in pursuance of a vote of the people, and in others the rate of taxation is limited to a certain ratio subject to be increased by the popular vote, thus transferring from the Legislature to the popular majority the most ancient and important legislative function,—the power to raise and appropriate money. The suppression or prohibition of the liquor traffic for the State at large has been submitted to the determination of the popular vote in many States. These examples illustrate the increasing disposition to accomplish less and less of legislation through agencies exercising delegated powers, but to do this more and more by the direct action of the people, by means of the popular majority. It is not surprising, therefore, that the proposition is now made to do in all cases what has heretofore been done in a few; to submit by means of the initiative and referendum any or all legislative questions to the direct determination of the popular will. This proposition has been adopted in a few States and finds favor in many quarters; but, though naturally and logically it may be the outgrowth of tendencies heretofore noted, as applicable to the Federal government, it is almost unthinkable. That government in every part and relation is founded upon the representative principle. By the Constitution all legislative powers therein granted are vested in Congress, a representative body. The Constitution itself was, of course, framed by a representative body; it was ratified and adopted not by the direct vote of the people of the several States, but by their representatives in conventions assembled. Its amendment must be proposed by representative bodies; by two-thirds of both houses of Congress, or by a convention called upon application of the Legislatures of two-thirds of the States; the amendments, when proposed, must be ratified, not by direct vote, but by representative bodies, namely, by the Legislatures of three-fourths of the several States or by conventions in three-fourths thereof. Thus profoundly did our fathers commit themselves to the representative principles. Still another consideration presents itself: To adopt Federal legislation by a direct vote of the people throughout the United States would mean the destruction of the States, the obliteration of State lines and the compounding of the American people into one common mass, which, says Chief Justice Marshall, no political dreamer was ever wild enough to think of. But it is enough to say that the referendum of this character can not be accomplished without revolution, because in the adoption of laws each State now has an equal representation in the Senate, and this

is the one provision of the Constitution not subject to amendment. Without this provision the government of the Union could not have been formed, and by virtue of it, in power of negative, Rhode Island is equal to New York, and Nevada, with a population less than that of a single county in Texas, is equal to that mighty commonwealth. No one can believe that the smaller States will voluntarily surrender this equality by agreeing to be bound by a majority of the votes throughout the country. On the other hand, if it should be proposed that there should be a majority of votes in a majority of the States, it is equally clear that the populous States would never consent to it, as they would thus lose the weight of their numerical strength and be bound by the action of a majority of the smaller States.

But the theory of direct legislation, even as applied to the States, contemplates a fundamental departure from our earlier conceptions of government. The theory of legislation by representation proceeds upon the idea that the representatives will be selected for their superior ability and qualities; that they will give a continuous and careful attention to the questions under consideration; that they will bring to their solution something of an expert and specialized knowledge, at least an undivided and undistracted attention; that they will proceed as a deliberative body, and be governed by a procedure compelling careful consideration and the testing of the merits or weakness of measures by committee scrutiny and full debate; that they will be less subject to the immediate impulses of passion and prejudice than the popular electorate. And in support of these views the facts are cited that the questions submitted to popular vote in constitutional amendments are rarely carefully considered; that the body of the people are usually not aroused to a sufficient interest to cause anything like a full vote to be cast, and that in the indifference or the ignorance of the majority of the voters is presented the opportunity for combined interests or small but active sections of opinion to secure the adoption of unwise and vicious measures. But back of these objections is the more fundamental one urged by the profoundest and most disinterested students of government, that legislation by the direct popular majority means the change from constitutional democracy to absolute democracy; that constitutional restrictions will not long restrain a majority, desiring and having the power, to change them; that unrestrained power is despotic power, whether exercised by a majority or a monarch; that the despotism of the absolute democracy tends quickly and inevitably to the despotism of one man. As Lieber expresses it: "All endeavors to throw more

and more unarticulated power into the hands of the primary masses, to deprive a country more and more of a gradually evolving character; in one word, to introduce an ever-increasing, direct, unmodified power, amount to an abandonment of self-government and an approach to imperatorial sovereignty, whether there be actually a Cæsar or not—to popular absolutism, whether the absolutism remain for any length of time in the hands of a sweeping majority, subject, of course, to a skilfull leader, as in Athens after the Peloponnesian war, or whether it rapidly pass over into the hands of a broadly named Cæsar. Imperatorial sovereignty may be at a certain period more plausible than the sovereignty founded upon divine right, but they are both equally hostile to self-government."

These are also the views of Cooley, of Calhoun, and of many other wise ones who have considered human institutions with a view to preserving human liberties. They may not be sound, but in view of institutional changes made and proposed, they must command your carefullest consideration as lawyers, as citizens and as freemen.

An address recently by the Honorable Secretary of State suggested in substance that great changes under our Federal Constitution must yet occur and that the Supreme Court of the United States, through its function of interpretation, must and will be the means by which those changes shall be accomplished. If the present address has succeeded in anything, it has established that in the face of the provisions of our written constitutions great changes have already been wrought in our institutions, and yet I can not characterize the suggestion referred to otherwise than as most insidious and dangerous. On the other hand, the proposed change in the method of legislation seems to me nearly akin to it, and I can not forbear the inquiry: Have we not gone far enough in departure from the ways of the fathers and from the spirit and principles of our constitutional systems? Instead of trying other and more radical experiments, is it not safer and wiser, more prudent and practical, to direct our attention to the vital part where weakness has shown itself, to endeavor by patient study, by unrelaxing effort, by whatever means may be necessary, to strengthen our representative department, to secure its independence, and to raise its levels of ability and character and efficiency? If further changes are to be, instead of effecting them on the one hand by weakening, if not destroying, one of the main foundations of our structure of government; or, on the other hand, by imposing on another a weight and burden still more crushing and destructive

to the integrity of the entire system, let the changes rest upon the original foundations; let them be in harmony with the original design and plan; let there be enlargement and expansion, if necessary, but let these be in continuation of the first strong and clear conception.

For myself, I do not hesitate to avow the belief that in the frame of government adopted in this country in the beginning we have our best assurance of orderly progress and happiness; that we walk in safest paths when guided by the principles of the Constitution as made by the fathers; that that instrument, as a scheme of government, is the most wonderful and admirable which the wisdom of man has yet devised. Nay, when I recall how little of the ordering of events which have contributed to the enlargement of human rights has been due to man's sagacity and how much to blind chance or else to a higher direction, I am loath to ascribe that great instrument to man's wisdom alone, but see in it rather the expression of a divine providence in its kindest manifestation.

In conclusion, I offer to this body of lawyers two reflections, old, old as human history, and yet made forever new by human experience. One, the need on the part of a free people of a never-ceasing vigilance in the consideration of measures, of a constant harking back to settled principles, of a constant testing of what is new and strange by the fundamental truths and axioms of constitutional government. The disposition to do this has been the distinctive characteristic of our English ancestors from whom we derive our almost priceless liberties, and it goes far to explain not only why these have been so enduring, but why their progress has been marked by orderly and imperceptible evolution rather than by hurly-burly change or destructive revolution.

The other is that constitutional systems are not made, but grow; that however elaborate or precise their written expression, these are as "sounding brass and tinkling cymbal" unless the spirit of a people is one with the spirit of their institutions. And in this statement I fancy I am able to suggest to you the lawyer's noblest work, the work of unifying the spirit of institutions and of people, of apprehending clearly the deep and abiding principles of government and of keeping them vital in the popular heart and understanding. In this connection, may I not say most American lawyers have in them a dual capacity; they are both lawyer and politician, and sometimes I have thought that too much the politician in us has controlled the lawyer, and that the profession will not rise to the height of its best usefulness until more and more the lawyer shall control the politician in us.

TOASTS.

OUR PROFESSION.

BY JUDGE PRESLEY K. EWING, OF HOUSTON, TEXAS.

Mr. Toastmaster and Gentlemen of the Bar Association:

My remark may not possess the virtue of modesty, but it has the support of truth, that the aristocracy of American brains is now, and ever has been in the history of our nation, the American bar. Plumed on the priceless ideals of the republic, impressed in her inspiring institutions, imprinted on her prevailing policies, written into her imperishable principles and linked with the very life of her laws, is the influence of the American lawyer. Not, however, on this continent alone, but in every clime where civilization has carried forward the immortal principle of liberty, the voice of the lawyer, above the din and tumult of retarding influence, has been heard in tones of thunder "to ring out the false, ring in the true." Now it is Erskine, with the impassioned fire of his resistless eloquence, grappling constructive treason and strangling it unto death which will never know a resurrection morn. Again, it is Labori, with a purpose nothing could appall, tearing the mask of military despotism from the imprisonment of Dreyfus, and mingling truth and justice with the eagles of France. Illustrations might be multiplied almost indefinitely; but it is enough tonight to hearken to their message and warning. Upon us of this generation is the responsibility of seeing that the matchless monuments of our predecessors shall not with dishonor be defaced.

The general sentiment doubtless prevails in some quarters that ours is a profession of craft built upon a code sadly deficient in its ideals of morality. Trick has been justly decried as professional prostitution, and falsehood as professional apostacy. The rule of the profession, whatever may be the exception, is duty rather than success, integrity of character and life, love of truth and right, respect if not reverence for authority, human and divine, and abundant charity for the frailties of man.

These are the shining glory of the profession, bench and bar. And if these principles are sometimes obscured by excessive zeal and emulation, ever and anon they will, like the sun shadowed by a passing cloud, return to their original splendor.

The frequent lay insistence that strict observance of the law can undermine respect for the law destroys itself. It is a paradox that is grotesque. Too often has it been refuted to need here more than passing notice. The right of the greatest or humblest, whatever the matter of inquiry, to be advised of the law, and to be heard under legal safeguards for judicial determination, has often been declared by the most eminent jurists, English and American, by the most discriminating thinkers in and out of the profession, and by the profoundest moralists who have pondered the subject.

While this is all true, it may, if left alone, be grossly misleading. It is true because in forensic contest truth is best attained, agreeably to the ancient maxim, *audi alteram partem*. It is true because it would be tyranny of injustice to decide ahead of judicial inquiry, and the function of adjudging is of the court and not the lawyer. It is true because when human laws are made the standard of human conduct, every man is entitled to be advised of them to their precise limits. But it does not follow that a lawyer may, and he can not without dishonor, use the law or help the client use it so as to pollute purity, strike down innocence, foster fraud or promote wrong, whether the consequences are to stop with the parties to a case or extend to the debasement of government in the sacrifice of a confiding people. The fee of the lawyer, under the ethics of the profession, never pays for the abuse of his conscience, his integrity, or his truth to court and jury, nor for surrender of that individual character which is essential to make him an uplifting influence in his community, socially, politically or religiously. To him in this connection may be applied the old Scotch story of the good bishop and bad duke; for no man can be a bad lawyer and a good citizen. And it may be well asked when the devil gets the bad lawyer in all his deviltry, where in the devil will the good citizen be? Everlastingly, however enticing the gold he must spurn, let the lawyer have the courage to say, if wrong out of the profession, it is wrong in it, and my character is above my pocket.

Yet, under this high ideal and within its bounds, the fidelity of our profession has been, through all its notable history, a light and landmark on the cliffs of the world's devotion. Rufus Choate once, in impassioned utterance, said: "My client's cause is my religion; my client is my god. I go in for victory to the last beat of the

pulse, the last roll of the drum." Lord Brougham, while defending Queen Caroline, expressed a similar sentiment. These instances of loyalty, though too extreme to comport with the proper ethics of the profession, bear striking evidence of the far lengths which great lawyers have sometimes gone in fidelity to their clients. As has been well said: "Kings might envy it and prelates imitate." No flattering can beguile, no temptation of reward allure, no spectacle of terror turn away the noble lawyer from his client's side. When once launched upon the sea of strife, whether borne aloft upon the rolling billows of the popular tide or dashed with fury against the sands, he stands alike firm and erect, never wavering in his loyalty, never faltering in his faith, an adherent who will not desert and can not betray.

Young men, those of you just about entering the profession, I say to you the bar is not a communion of saints, and it often needs a forgiveness of sins But ever, above and beyond its fools to be pitied, and its knaves to be deplored, is an escutcheon, spotless and stainless. To your hands it will soon be committed. Bear it above the marshes of commercialism and greed, raise it to the heights of patriotism and truth, consecrate it to law and order, enshrine it to human liberty, and finally plant it on the turrets of its traditions where the stars may gleam and glitter over it as it proclaims God's foremost attribute on earth, Justice—untarnished and unsullied, for which all place a temple and all season summer.

THE SUPREME COURT OF THE UNITED STATES.

BY D. EDWARD GREER, OF BEAUMONT, TEXAS.

Mr. Toastmaster and Brethren:

If I were asked to attempt to describe, in one short sentence, the subject of this toast, I should say it is the greatest bulwark of, and the greatest menace to our liberties! That august tribunal at Washington is the greatest court of the greatest nation on earth; and more than this, owing to our unique form of government, it has more power in this nation than any court has, or ever has had, in any other nation. Under the Constitution, the Supreme Court is above the legislative department, above the executive department —nay, above the people themselves, until they see fit to change the Constitution—and even then that court has the power to determine whether the change has been legally made! It is the supreme power in all this land! Before its mandates, the most solemn judgments of the highest courts in the States, the most deliberate acts of the State Legislatures, and of the National Legislature alike, dissolve into nothingness, as dewdrops before the advancing sun; and the oppressed all over this broad land seek its sacred precincts as their safest sanctuary!

In England, and in all continental countries—indeed, all over the civilized world, except in the United States—the legislative branch of the government is supreme, and hence it can abolish any and all courts, and prescribe the power and jurisdiction of each. But not so in our government. The Constitution itself creates the Supreme Court, and gives it a wide jurisdiction; and, as the Constitution is the supreme law of the land, it is beyond the power of Congress to abolish this court, or limit its jurisdiction.

The transcendent power of this court proceeds from two sources, both of which are distinctly American: 1. The constitutional form of government. 2. The resulting right in the courts to declare acts of the legislative department void, when in contravention of the Constitution.

To America belongs the great honor of giving to the world the constitutional form of government; and it has been said by a distinguished writer that this is the greatest gift which America has

conferred on man. It is true that the idea of government under and by written instrument, promulgated by the people themselves, as grants of, and limitations of power, is of ancient origin, finding its first expression in Magna Charta; and finding still further expression in various subsequent acts and declarations of the English people. But the idea was vague and undeveloped, and not until the American colonies separated from Great Britain did that idea spring into full life and fruition.

One of the incidents to the adoption of the constitutional form of government was the separation of the functions of government into three departments—the legislative, executive and judicial; and out of this separation grew the practically supreme power of the courts to nullify acts of the legislative branch. The great Rufus Choate, in speaking of this right and power, said he could point to no other achievement of American statesmanship which would take rank with it, as beneficial to the people.

And yet it is doubless true that our fathers, in adopting the Constitution, builded wiser than they knew; and it probably occurred to few of the framers that, in creating the Supreme Court, they were making a power so transcendently great and above the legislative and executive branches of the government. The power to annul acts of the Legislature was a deduction, and not an express grant; and probably had it been proposed to expressly grant such a right, the framers would have rejected it. In no other country in history has such a power been exercised.

Today, Parliament is supreme in England, and the British Constitution, though supposed to exist, is whatever Parliament sees fit to declare it. And, although, in France, Spain, Belgium, Germany and other continental countries, there are so-called written constitutions, the legislative power is supreme; and no courts outside of the United States have ever undertaken to nullify, by judicial decision, acts of the legislative department.

Even in the United States, after the adoption of Constitutions, the right and power in the judiciary to do this was at first seriously doubted and questioned, and the doctrine was long in being established. In the State of Vermont, the right of a court to declare an act unconstitutional was at first denied; and in Connecticut a similar view was advanced. During the first part of the last century two judges in Ohio, who had declared an act unconstitutional and void, were impeached, and in Kentucky a similar course was taken, and the Legislature re-enacted the law which the court had annulled, and legislated the judges out of office. As late as 1825, in Pennsylvania, this power of the courts was doubted; but the doctrine was firmly established, so far as the Supreme Court of

the United States is concerned, when the great chief justice, John Marshall, in 1803, in the case of Marbury vs. Madison, asserted and demonstrated the right in that court.

By the Constitution, powers were sparingly given to the national government, and all not expressly given were reserved to the States; but by one of those strange results, often encountered in history, and in the result of human planning, the opposite of what was intended was accomplished, and the very thing sought to be guarded by withholding power from the national government was best guarded by the powers conferred, viz., the rights of the States. By putting the power of the Supreme Court above and beyond that of Congress, the States' rights were preserved from infringement by legislation conceived in passion and enacted in prejudice. In proof of this, I need only cite the decision of the income tax case, where the Supreme Court denied to Congress the right to levy a direct tax upon property in the States. Again, by its interpretation of the Fourteenth Amendment, the Supreme Court upholds the liberties of the individual citizen as against the attempts of the States, now so common, to enact vicious class legislation, and thus the individual finds himself protected by a power he was wont to consider foreign, and to look upon with suspicion.

But not only does this court fill us with awe by reason of its great power for good and for evil, but it challenges the admiration of the world by the manner in which it has fulfilled the trust imposed upon it. It is unaffected and uninfluenced by political passion or popular fanaticism, as witness the decision of the Dred Scott case, at a time when the populous section of the Union was mad with abolition theories; or the declaring of the legal tender acts void at a time when such a decision, it was believed, would bankrupt the nation. The action of the court in each of these instances was in the face of great popular opinion and clamor, amounting to almost unreasoning frenzy; and yet, the court calmly and judicially reasoned on the questions before it, and with a courage seldom seen under such circumstances, announced its decision directly contrary to the popular demand. A little later the court held void the civil rights bill, and this practically nullified the last remaining vicious legislation, caused by the bitter passions engendered by the Civil War.

In another respect this court is entitled to our admiration. Contrary to the practice of most tribunals, who are the sole judges of the extent of their powers and jurisdiction, this court, instead of extending and enlarging its jurisdiction and usurping power, has steadily set its face against all such, and has, again and again,

rebuked the lower courts for infringing on States' rights, by assuming jurisdiction in cases which might be considered doubtful.

Recently, in Alabama, a circuit judge released on habeas corpus from the State officers a negro charged with murder, because he claimed the right to be tried in the United States court, by reason of the alleged existence of a conspiracy among the whites against him. The Federal Supreme Court denied the right, and remanded the prisoner to the State court for trial, holding that if the laws of the United States were violated the questions should be brought up by writ of error to the Supreme Court of the State. Another instance occurred in this State: One Grice was indicted in the State court for violating the anti-trust laws. A Federal judge at Dallas had the prisoner brought before him on habeas corpus, on a claim that the anti-trust law was in violation of the Constitution of the United States. He heard the case, held the law void, and discharged the prisoner. On appeal, the Supreme Court reversed the trial court, and remanded the prisoner to the State court for trial.

Again, in the now celebrated Haywood-Pettibone cases, being tried in Idaho, the Supreme Court upheld the extradition of the prisoners from the State of Colorado, on the demand of Idaho, although it was practically conceded in the case that the prisoners were not actually fugitives from justice, since they were not in the State of Idaho when, and had not been there since, the crime was committed. The Supreme Court held that it could not go behind the application for the extradition, or the action of the Governor of Colorado, in ordering the prisoners' return to Idaho.

And so, in the numerous delicate but supremely important questions that have come before that court, it has met the issues and decided them correctly, according to the belief of the overwhelming majority of the American bar, and with the approval of the people; and, instead of taking to itself power, and usurping rights not clearly given to it, although it is the supreme judge and arbiter of all such questions, in cases of doubt it has always refused to take jurisdiction.

I have referred to the Supreme Court as "the greatest bulwark of, and the greatest meance to, our liberties." The latter characterization, perhaps, needs explanation. Referring again to the Constitution, it will be seen that the number of judges which shall compose that court is left entirely to Congress, and the judges are appointed by the President, with the advice and consent of the Senate. Now, if there was a great constitutional question to be decided by that court, and on which the rights of the States and the liberties of the people depended; and in case the party in Congress desiring such question to be decided a certain way had con-

trol of both houses of Congress, and the President was of the same party, the President and Congress could lawfully enlarge the Supreme Court to any number of judges necessary to secure the desired decision; and then, by selecting appointees, whose views were known, the party in power could be certain of the decision it desired, in advance. To a certain extent, this very thing has occurred in the history of our government. When the constitutionality of the legal tender acts was first before the court, it consisted of eight judges. Five of these, after great consideration, declared the legal tender act void, as being unauthorized by the Constitution. The other three judges dissented. Shortly thereafter one of the judges —and one of those who held the law unconstitutional—resigned, and Congress passed a law at once, increasing the number of judges to nine. General Grant, then President, appointed two new members of the court, both of whom were well known to believe the legal tender acts constitutional. The result was that, out of the court, as constituted under the new act, five of the judges believed the legal tender acts constitutional, and four did not. A case was gotten into the courts at once, and the Supreme Court reversed the decision of the eight judges—the four of the old court, however, on the bench, who had held the law was unconstitutional, still voting that way and dissenting. But by this means Congress and the Executive procured a reversal of the first decision, and procured the decision they desired.

The same thing could be done now. The income tax law was decided to be unconstitutional by a divided court of five to four. This act has never been repealed. If Congress were to pass a law increasing the number of judges to eleven, and the President should appoint two who believed that the income tax was constitutional, the court would stand six to five in favor of the validity of the law, even if five still believed the law void. I only mention this to show that the great power of the court can be prostituted to political ends by lawful means; but it has occurred but once in our history, and then only to save the nation from bankruptcy, and it will probably never occur again, except for a like reason. Yet, we can not shut our eyes to the fact that the Supreme Court is like a great protecting wall, which secures the safety and happiness of those inside, but, if undermined from the inner side, would become a great, overhanging precipice, and a menace to those it had theretofore protected.

There is another danger from that court. All thoughtful men know that there is a growing tendency toward centralization, and the wiping out of State lines. Secretary Root has lately voiced the sentiment that is finding lodgment in the minds of many of

our greatest men; and Colonel Farrar, of New Orleans, a typical Southerner, has given public expression to views on the power of the national government with respect to railroads, which, if adopted, would go far towards the effacing of State lines. The President advocated these advanced views in an address at Indianapolis the other day; and in the last Congress the advocacy of the pure food bill and of the child labor bill showed an unmistakable tendency to enlarge the powers and sphere of the general government at the expense of the States.

The Supreme Court must be the final abiter of the legality of such attempts; and it is easy to see that if Roosevelt were given a third term the court might be made up of judges who believe as he does on such questions. The sentiment is growing tremendously with the people. In these days of quick communication and interchange between all parts of the country—when most of the things one uses are brought from other States, and when each State is passing laws which really hamper and hinder interstate commerce, by taxation of and discrimination against corporations of other States; and conflicting laws on insolvency, on commercial paper and such subjects, are being enacted in the States, which inconvenience business—thoughtful people all over the land are beginning to wonder if, after all, the maintenance of States' rights, as of old, is worth the cost and inconvenience.

Whether Mr. Roosevelt is given a third term or not, Rooseveltism will probably live in his successor, and his views, backed by a growing public sentiment, will find support in the Supreme Court.

But, after all, the danger I have pointed out, existing by reason of the great power of the Supreme Court, and the manner of making up its composition, is best met by the high integrity and patriotism of lawyers; and I, for one, do not believe that enough lawyers could be found and put on the Supreme Bench to deliberately overturn the Constitution. In the legal tender cases, the question was close and doubtful, and many great lawyers differed from the majority of the court in its first decision. Indeed, as said, three of the old court dissented; and today it is probably true the majority of the American bar believe the second decision was right. Now, if it were sought to pack a court to overturn a plain provision of the Constitution, I believe the lawyers would stand as a unit against it, and render the plan impracticable. Lawyers, in all history, have stood for liberty and justice; and, ever since the great revolution in England, in which they had a great part, they have been foremost in securing and preserving the rights of the people; and I do not believe they would be found wanting, if it were sought to make them means of defeating those rights and nullifying the Constitution.

THE LAWYER IN LITERATURE.

BY A. E. WILKINSON, OF AUSTIN, TEXAS.

Mr. Toastmaster and Gentlemen:

That there is some sort of relation between law and literature is obvious. The number of distinguished authors who have commenced life by trying to be lawyers—their name is legion—is proof sufficient upon this head. But when we come to analyze the relation it is clear that, whatever causal connection may exist between the phenomena, is to be classed not as proximate but remote. The future author, in following the law, has not come to a stepping stone, but to a jumping-off place.

I once maintained the proposition before this body that the pursuit of the practice of law was about the most deadly disqualification with which one could encumber himself if he hoped to become a writer, and I am not disposed to retract or reconsider that opinion. The law is an admirable training in logic and in capacity for accurate statement, but that very process is fatal to the imagination. And, conversely, it would be fatal to any young lawyer's success to let it become known that he was nursing literary ambitions.

Mr. Stedman, in "Poets of America," remarks that Lowell, during the brief—and briefless—years of his career as a barrister, "clouded his professional prospects by publishing a small volume of poems." Such an indiscretion would, in general, be sufficient to counterbalance the largest capacity and most hopeful opportunities. The average client would abandon his design of employing a young attorney more quickly on learning that he was suspected of writing poetry than on being told that he was lately released from either the penitentiary or the insane asylum.

If there existed no other good reason to dissuade the budding jurist from such a venture, the mere possibility that an opponent might quote the verses on him in the contests of the courtroom, selecting the most sentimental for the purpose, would be ample. The great case of Higginbotham vs. Swink is, of course, the leading authority on this doctrine. (Opinion by Baldwin, Judge, reported in "Flush Times of Alabama.") If the case is unfamiliar

to any of my hearers, his legal education is incomplete, and the defect should be remedied at the first opportunity. Of all the excruciating thrusts at his innocent and suffering opponent delivered by "Old Sarcasm" on that occasion none was quite so sickening as the quotation of the lines from the village newspaper about the "venemous worm," and the recommendation of "Swain's Patent Vermifuge" as an appropriate remedy.

And yet we are confronted with a great army of poets, novelists, historians, and the like, who commenced life by practicing law—or trying to. "Aye, there's the rub." As lawyers pretty much all of them belong, not to the tribe of has-beens, but to that of wanted-to-bes.

A very few have gained fame by taking up literature as a sort of recreation, after winning their place at the bar. These, as a rule, prudently avoid sentiment and confine themselves to wit or philosophy. William Allen Butler, of New York, is a type of the class. "Nothing to Wear" was a literary sensation back in my early boyhood days. His poetical ambition was not a soaring one. He wrote a poem on "General Average," but I am not aware that he attacked in verse any of the more serious professional problems, like Negligence or Equity Pleading.

But to return to the would-bes—the multitude of eminent men whom the law has sent into the profession of literature. It may be safely assumed that they are not there from choice. If Fielding or Thackeray had found clients we would all be the poorer for never having made the acquaintance of Tom Jones or Colonel Newcome. If Stevenson had gained a foothold in his chosen profession, we should never have known what we had missed in missing our delightful association with Alan Breck Stewart. Nay, if it be true, as some affirm, that Shakespeare served an apprenticeship in a lawyer's office, I think it clear—with due apologies to the Bacon-Shakespeare party—that, if he had got a-going as an attorney we should never have had Hamlet. It is true that we would not willingly exchange Hamlet for any contribution the author could possibly have made to the law of contingent remainders.

But, on the other hand, if the asperities of the law are responsible for giving us any considerable portion of our current fiction, it is important that those asperities be mitigated, to the end that the resulting fiction be abated. For who would be a writer of novels if he could practice law? What successful lawyer would change place with any one in the world—except a more successful one—or a Federal judge. He has a job so seductive that he generally continues to work right along at it for fun years after he is

entitled to retire on full pay. Some philosopher has said that the most fortunate lot in life is to be well paid for doing work which you would be willing to do gratuitously.

Away back in or before the childhood of those of us who are now gray, Whittier, the dear old Quaker poet, who so loved a fight, endeavored to dignify the lot of toil by writing a series of "Songs of Labor." One of these was maliciously parodied by Dr. Holmes, in the "Treadmill Song," supposed to be sung by convicts in the penitentiary:

"The stars are rolling in the sky,
The earth rolls on below,
And we can feel the rattling wheel
Revolving as we go."

The lines ended in an outburst of joyous pride:

"And if they chance to turn me out
When I am older grown,
Now, hang me, but I mean to have
A treadmill of my own."

The United States judge is the only living example of any such delight in the dignity of labor.

There is a fable, somewhere, of the animal who declined a polite invitation to enter the lion's den, because, though the footsteps of many creatures led into it, he saw no tracks coming out. The warning found at the gateway of the law is different. There are tracks without number leading away into all the other callings and professions, and presumably they all went away because they could not get in.

Now, we know that the path of the man of letters is a steep and thorny one. We know it because they have told us so at length and with much particularity of circumstance. It will be conceded that whoever attempts this perilous venture should be prepared for grief. He must be trained to cheerful fortitude and the endurance of the pangs of neglect and disappointment—"the insolence of office (the publisher's office) and the scorns which patient merit from the unworthy (public) takes."

Where, I ask, can the ambitious youth acquire a more strenuous schooling in these stern virtues than by the preliminary attempt to break into the practice of law? Once having tried that, he will be reconciled to any hardship and grief; as compensation for his failure in one profession, he will have a resignation to the tough things of life which will make him patient anywhere. This, I

take it, is the remote cause of the success of so many ex-lawyers in the arduous pursuit of authorship.

I can not refrain from a serious word in closing. We, as lawyers, should be keenly alive to the greatness and usefulness of our noble profession. And it may confidently be said that we are. While the representatives of all other callings get together to discuss ways and means for promoting their own interests and more effectually working the general public, we alone meet to concert measures for the public good. We have heard a hundred proposed reforms discussed in bar associations. Was one of them ever designed in any degree to enable lawyers to make more money? That's rather a striking thing when you come to think about it.

So seriously do we take our great office that in these gatherings, even in our convivial moments "across the walnuts and the wine," we can not keep our fingers off schemes for reforming the law, for making it grander and nobler and more beneficent—and smoothing the rugged approaches by which aspiring youth get access to it. We have tried to do our share towards preventing rash ventures without adequate preparation for its hardships.

But these hardships arise not so much from the incapacity of the beginner to attend to business properly as from his inefficiency in the more delicate art of getting business to attend to. This is established to my satisfaction from my own experience. The observation seems to have struck an answering chord in your bosoms. The difficulty does not seem to be confined to the cub lawyer. This fatal deficiency it is which has driven so many promising youths from the useful and honorable walks of the law to the devious paths of the man of letters.

Such a result is unfortunate. There are too many men writing historical novels who ought to be in justice court prosecuting the railway for running over their neighbor's Jersey calf. There are those who maintain that we have too many poor lawyers already. But all will admit that we have too many writers of poor novels.

Now, the remedy which I would propose is an eminently practical one, and in accordance with the educational tendencies of the age. We spend too much time, relatively, in training the youth to attend to law business, a task for which they are already qualified—as they themselves will admit—and we spend none at all in teaching them how to get it, for which many of them are yet to learn that they possess no qualifications whatever.

Our law schools are abundantly provided with machinery for teaching the science of jurisprudence—even in some cases with mechanical devices for training in the intracicies of practice, which it

used to be supposed could only be licked into the beginner in the courthouse—a painful process. Should we not have now in our colleges professors of the science of getting retainers? It is a virgin field, and the suggestion opens up visions of a range and variety of subjects of instruction well worth the attention of our great universities.

There is a fine chance here for a fortune to be made by the establishment of a new correspondence school. I see the prospectus now, in my mind's eye, as the gigantic scheme dilates before my imagination:

THE COLLEGE OF PRACTICAL LAW.

FIVE DEPARTMENTS.

TWENTY INSTRUCTORS.

Hon. Howe U. Ketcham, Ph. D.,
President and Professor of the Psychology of Client Capture; Author of "Get There, a Hand-book of Professional Success," and of other leading treatises.

A. Keene Skinner, LL. D.,
Dean of Department of Cliental Manipulation.

Cutting Bagman, LL. B.,
Dean of Department of Methods in Damage Suit Industry.

Professor R. R. Counselor, D. C. L.,
Author of "How to Work Corporations," etc.

Surely there are thousands of ambitious young men in America by whom the promise of a really scientific method of treating the great problem of professional success would be most gratefully received.

We are nothing if not reformers. It gives me pleasure to offer this humble contribution to the subject of legal education. I trust that the seed may fall upon fertile ground, and that, as a result, fewer unfortunates may be driven in the future from the green pastures of the law to wander in the barren deserts of literature.

TEXAS AND ARKANSAS AS SEEN AT TEXARKANA.

BY HON. PHILIP LINDSLEY.

Mr. Toastmaster:

I have heard it said, sir, that the common prayer in Arkansas in its earlier day was "O Lord, give us this day our daily—stranger!" And the Texas contingent at the Texarkana Twin Bar Association was glad to meet so many of these welcome strangers who had been held up in Arkansas on their way to Texas. Evidently they had each and all more than gotten back their initiation fee.

The Texas Bar Association and the Arkansas Bar Association met there, sir, as one body, while brilliant addresses and the sparkle of humor held our undivided attention. Now and then we would adjourn for awhile and hold some little reunions on the outside—I mean on the inside! This would be by twos or fours, or just as it might happen. Some of us, sir, at Texarkana became old friends before we had time to be new acquaintances.

And all this was as it should have been. For there are things in common or beautiful by contrast between Texas and Arkansas, some of which were happily demonstrated during this gathering in that picturesque twin city. I heard a young Texas man there speaking of kissing a pretty Arkansas girl, and he said, sir, it tasted exactly like a Texas girl!

In the list of beautiful flowers we have the yellow rose of Texas. In the witchery of music on the fiddle they have the "Arkansas Traveler." If, in the politics of both States, the motto has always been the office should seek the man and not the man the office, the sensible practice has also obtained in each State that the man should always be around while the office was hunting him!

Still indulging, sir, in lighter vein, we find in jurisprudence marked similarity between the two States on some lines in their earlier history. For many years in Texas when a man was tried for horse stealing that humane maxim of the common law that every man is presumed innocent until the contrary is proven was reversed, and the presumption, at least with the jury, was one of guilt. And we read, sir, in Shinn's history of Arkansas, when

Judge Lynch in 1839 executed three men charged with crime, before they were hung, naively and no doubt truthfully, says the historian, the defendants were given a full opportunity to prove their own innocence. If it was a Texas justice of the peace who sentenced a man to three years in the penitentiary, it was an Arkansas justice who sued his fellow citizen on a debt for $80 before himself; then, to show his fairness, gave judgment against himself, certifying on the transcript the reason, took an appeal and the higher court affirmed the judgment.

The people of each State, sir, are pronounced in speech, as in action. At our great Confederate reunion in Dallas Governor Hindman of Kentucky told me he noticed whenever he was introduced to a man from Arkansas the latter invariably laughed. Finally he asked the reason. "Why," was the reply, "we know if we didn't laugh the other fellow would!" And the other fellow, sir, if from Texas, did laugh, for he was glad to meet the man from Arkansas on Texas soil.

I believe, sir, it can be shown that swearing has been reduced to a fine art in both States. It was an Arkansas lawyer who concluded an impassioned argument to the court with the solemn assertion, "Your Honor, I am willing to swear that what I have stated is the law!" He won his case. It was a Texas lawyer whose brief in the Supreme Court was suppressed on motion for non-compliance with the rules. A second brief, for the same reason, met with the same fate. He then filed a third brief and attached to it the following affidavit: "I do solemnly swear that the above brief is made in accordance with the rules prescribed by the Supreme Court of Texas, to the best of my knowledge and belief, so help me God!" And a third motion to suppress, it is needless to say, was promptly overruled.

But, sir, while humor and good fellowship prevailed at Texarkana, there was other, I will not say nobler, but equally appropriate retrospection. We all gladly realized there were historic facts that must ever tend to kindly feeling between the people of these two great States. In 1836 Arkansas was admitted to the Union. The same year, for the express purpose of joining our Union of States, and as a necessary preliminary step, Texas threw off the Mexican yoke and proclaimed herself an independent Republic. We of Texas may not forget that the Legislature of Arkansas in 1844 passed a joint resolution calling upon her Senators in Congress to vote for any measure that would aid Texas in her efforts to become a part of the Union and an Arkansas Senator, Chester Ashley, made a brilliant speech to that end. Ambrose H.

Sevier, of Arkansas, was one of the two commissioners on the part of the United States who negotiated the treaty of Guadaloupe Hidalgo that not only ceded to Texas all the land it claimed, with the Rio Grande as the boundary line, but also gave to the United States all the northern part of the Dominion of Mexico, thus opening up the way of our imperial Republic on southern lines to the Pacific and fixing her sway over those golden shores for all time.

Only one more historic reference, the most curious and unique of its kind to be found in all American annals, tending to show the close relationship between the two States. Red River county, Texas, and Miller county, Arkansas, adjoin each other. For years the boundary line between the two was in dispute. In 1836 Richard Ellis and James Latimer, with their families, lived together in the same dwelling in the disputed territory. When the sheriff of Miller county, Arkansas, came there to collect taxes he was informed by an indignant mob that this particular strip of land was a part of the Republic of Texas, which at that time collected no taxes. In 1836 Richard Ellis represented that district in the convention that declared the independence of Texas, and was the president of that body. At the very same moment James Latimer represented the very same constituency in the Legislature of Arkansas. And the historian Thrall, in relating these facts, gravely asserts this created no confusion.

All of which, Mr. Toastmaster, goes to show that these Anglo-American pioneers were equal to all emergencies and could create or wipe out State lines to suit their own good pleasure and convenience.

Yes, sir; it was a unique and famous gathering at Texarkana. Notable it was in the number, ability and amiability of those who attended as members of the two Associations. And notable likewise in having as its chief guest of honor Mr. Justice Brewer of United States Supreme Court, whose superb address before the joint association captured his audience, was favorably commented upon all over the country and readily passed from State to State, not as an original package, but in delightful parts, without the assistance or resistance of interstate law.

This rambling talk of mine, sir, would be very imperfect, very forgetful, if I did not say all the arrangements at Texarkana were perfect, thanks to the untiring energy, the felicitous persuasion, the exquisite taste of Director General R. E. L. Saner. Himself born and reared in Arkansas, a Texan by adoption, on this happy occasion he illustrated the glory of two great States.

Concluding, I believe, sir, that you, and all of you, will join me in the hope that these two great States, situated geographically side by side, bound together by that hospitable twin city of beautiful women, and gallant men, may be brought still closer together in social and business relations, by this commingling of their lawyers. May the sun of heaven shine prosperity on each alike; may their sons and daughters ever emulate the virtues of those sturdy Anglo-American pioneers who paved the way, and may the glad right hand of fellowship ever be extended from one to the other to all who cross their boundary lines.

RAILROADS; THEIR TRIALS AND TRIBULATIONS.

BY HIRAM GLASS, OF TEXARKANA, TEXAS.

Mr. Toastmaster and Gentlemen:

On yesterday morning in listening to the Address of Welcome by Judge Minor of the Beaumont Bar, he told of the inquiry of Mrs. O'Shaughnessy when she says, "Good morning, Mrs. O'Flanigan; how is Mr. O'Flanigan this morning, not that I care a damn about his health, but it is a good way to start a conversation." Now, I am like my friend Sonfield, I do not know why the committee selected this toast, because there are none of you that care a damn. Yet, I am not so sure, gentlemen, that the public ought not to take an interest in the trials and tribulations of railroads. They really are useful in some respects, as much as it is the fashion to abuse them. Now, I never have been able to understand why the railroads are abused so much, unless it is a fashion. It is the only way I can account for it. A great thing with the American people—with some people—is to be out of fashion is to be out of the world. A lady suffering with stomach trouble sent for the family pysician. He came and when asked by the lady, he informed her that she was suffering from stomach trouble and must die. As soon as the doctor was gone she dispensed her son to the drug store, who inquired of the druggist what was the most fashionable cloak for that season; that the doctor had informed his mother that she had stomach trouble and had to die, and that his mother thought she had just as well have a fashionable cloak. Now this fashion of abuse of railroads, I am in all seriousness, has not only injuriously affected them, but has injuriously affected, and will in the near future injuriously affect all the business interests of this country. It is said now that it is difficult to procure money to build more lines of railroad. It is a well known fact that the facilities of railroads for handling the commerce of the country are entirely inadequate. I fear, therefore, that this fashion to abuse will not only result, and has not only resulted, in injury to the railroads themselves, but to the public as well. It is proposed by some of our public men that the railroads should make their business public. Why, it has been public for years. I know

of no other business in this State where every act, where everything that is done, is open to the examination of a board specially appointed to find out what they have been doing. But this idea of publicity is a good thing, and I think the railroads should help carry out the intention of the law and make public everything they do and explain themselves as they go along. There are a great many things they do that are misinterpreted. A few years ago out in Colorado, where there are large sections and tracts of land that are unsuitable for anything but growing sugar beets, the Santa Fe Railroad ran through that country, and it was finally proposed by the land owners that they get a sugar plant in that section. In order to procure that plant it became necessary to put up a certain bonus. The land owners raised all they could and were short $30,000. They then went to the management of the railroad company and explained to them that if this land was put in cultivation a great amount of sugar beets would be raised, which could be manufactured into sugar, which would be shipped out over the railroad. The management paid $35,000, which was carried on to the books and properly entered. A few years following that time the Interstate Commerce Commission, in investigating railroads, ran across this item paid for this sugar manufacturing company. They came to the conclusion that it was a discrimination of some kind, and, therefore, commenced a prosecution against the railroad. It was then up to the railroad to explain the item, which they did, making it clear that they had subscribed the money. It shows how necessary it is to explain what is really an innocent act, but which might be misunderstood. It reminds me of a newly-married couple traveling through the country. No one knew they were married. When they reached the town of Sawyer, a station on the railroad, and when the young man thought that no one was looking, he took advantage of the situation and imprinted a kiss upon the lips of the young lady. Just as he did so the brakeman opened the door and hollowed "Sawyer." "Well," the young man replied, "there is no harm in that; we are married." So I will say that publicity is a good thing, and these matters should be explained oftener than they are, and it might avoid a great deal of trouble.

Now, another trial and tribulation that the railroads have is with the politicians, because I tell you, gentlemen, however unworthy or incompetent a public servant proves himself to be, there is nothing that he can do that will more quickly reinstate him in the estimation of his constituents than the abuse of railroads and railroad lawyers. If through incompetence or inattention to his public duties the voices of the people begin to be heard and the clouds of disapproval begin to gather around his head, all he wants

to do to set himself right is to jump onto the railroads and the railroad lawyers, especially if he will promise to put them in stripes.

Trials and tribulations could not be parted from a railroad with a club. I believe the railroads obey the laws of the State better than the average citizen. About the only person you hear howl about putting railroad officials in stripes are the little politicians, who have nothing better to commend themselves for public office.

THE LADIES.

BY F. CHARLES HUME, JR., OF HOUSTON, TEXAS.

Mr. Toastmaster, Ladies, Gentlemen and Fellow Bachelors:

I appreciate sincerely this token of your confidence, and I realize how great the courage required of the toastmaster to stand sponsor at this time for a member of the Thirtieth Legislature. My official follies I shall not attempt to palliate or deny. For my present purpose let me beg you to forgive, if you can not forget. In my extremity I am supported by the reflection—which I trust will in some measure extenuate my political record—that it was the cackling of geese in the capital that saved Rome!

I am keenly sensible of the rebuke implied in assigning me this subject. True, I am a bachelor—all desolate; and pity 'tis, 'tis true; yet the blame is not my own. It takes two to make a marriage as well as a quarrel—not that there is any necessary connection between the former and the latter. My parents used to be apprehensive lest I marry—now, alas, they realize the baseless fabric of their fears, and behold me a life member of the matrimonial grievance committee.

While I have known somewhat of the vicissitudes of love and courtship, the stages of softness, poetry, dejection, sleeplessness and despair; still I am a philosopher and can tell, without resentment, the story of a blighted life. Nor time and place, however, conspire to bid me loose the plaintive note and o'erwhelm with gloom this scene of mirth and revelry.

It is not my intention to disclose in antic mood the knowledge I have acquired in the process of my undoing. Solemn is a lover's fate—"He jests at scars that never felt a wound." Indeed, most that I shall say about the ladies is based upon information and belief, for never in my life have I addressed a woman—successfully. I find it is easier to talk about them than to them. But I hope that my talking about them will not be taken as an impertinence or as an infringement upon their own peculiar privilege and pleasure to talk about one another. It is with diffidence and misgiving that I submit this discourse at all, as my father took so little pains in its preparation. But my mother has assured me

that I can do as well as anybody else's son, if not better, and, as a devoted son, I beseech you to affirm her judgment.

In this perennial toast men find the explosive moment saccharine —the golden platitudinous opportunity to express and applaud the sentiment of woman's supreme excellence—rather than annoy her with such compliment at home. And, accordingly, there is usually enough sweetness distilled upon such occasions to cloy the desert air and exhaust the language of flowers. Oh, inconsistency, thy name is man—to mock at woman's extravagance! But alas for man's exhilaration! How soon the festive words mellifluous are forgot. Even on the morrow the luscious glamor is dispelled; and low is laid the ghost of fulsome laudation, when specter of new dress or bonnet looms upon the grumbling threshold.

As you all know, some great lesson is to be drawn from every after-dinner speech. This particular theme necessarily suggests the chief end of man, the cardinal beatitude of matrimony. And I hope to impress upon you young men the desirability of cultivating the ladies—perchance to marry. At least you may attain to the glory of a "social lion" or a "ladies' man"—the lofty satisfaction of noble minds.

According to Sidney Lanier, "to love a good woman is a liberal education." And I confess that within the meaning of that definition I have become over-educated, without graduation. However, though nature has sought to disguise the fact of my youth, I still feel that I am a young man, and shall not cease to worship or to hope. And I insist that you young lawyers—who rejoice in arguments—can do no better thing than take a wife; if you can not accept my opinion, ask the ladies themselves. I trust you will be more successful than I have been, and become, in due course, seasoned sweet in a wife's regard. For as the proverb runneth, no man knows what happiness is until he's married—and then it's only a memory.

It is a mistake to assume that woman is a "side issue"; she has come to stay. She is the whole question—the eternal question. Ruskin wrote a book called "The Mystery of Life and Its Arts." Had the title been "The Mystery of Life and Her Arts" we know it would have been about women, just as though it had been called "The Last Word." The culture of nations is tested by the station accorded them, just as the patience of man is tried in winning them. All men desire their esteem, though not all deserve it. They are the proper and bewildering study of mankind—their smiles of joy, their tears of woe, perplexing shine, perplexing flow—inscrutable.

Breathes there a man with soul so dead
That never to himself hath said,
A hundred times, "This is the girl for me"?

Yet what man can fathom her smile or comprehend her tears?

She is no longer to be regarded as a chattel or a drudge, nor as a mere ornament or frivolous institution. Christian civilization, chivalry and true nobility have brought her into her own—man's helpmate and his inspiration. And through her the home a vestal temple is, where burns the sacred fire of love. "And wherever the true wife comes," in Ruskin's lofty strain, this home is always round her. The stars only may be over her head; the glow-worm in the night-cold grass may be the only fire at her feet, but home is yet wherever she is, and for a noble woman it stretches far around her, better than ceiled with cedar or painted with vermillion, shedding its quiet light far for those who else were homeless.

They are said to make better wives than clients. And so, my young friends, when you find that lovely woman "in whose face do meet sweet records, promises as sweet," fail not to take time by the wedlock, for Old Time is still a-flying and procrastination is the thief of bliss. And lay not the flattering unction to your soul that she is thine till 'neath the hymenial wire you have passed, for full many a prancing steed hath been left at the post.

I advise you not to burn your bridges behind you. You should be circumspect, looking before and after. "The course of true love never did run smooth"—on mere prospects. Husband your resources. You can not indulge grand piano propensities on a phonograph income. You should remember that a bride wants a home of her own, and in your magnanimity you will of course be glad—if she has one. For wealth is a matrimonial barrier that cupid "takes" gracefully.

You should be cautious not to exalt yourself too high. Few men can accurately compute their own discount, while women are expert discountants. They understand full well when men love them for all they are worth—especially if they have fortunes. Remember, too, that fair speech ne'er won wise lady. Few are deceived by frantic protestations of a poetic future, for they know from tradition that the hand that rocks the cradle often rules—the kitchen stove.

Lord Bacon put the question in the pungent lines:

"What is it, then, to have or have no wife,
But single thraldom or a double strife?"

And other disgruntled cynics have maintained that women are mercenary and have no sense of justice. My own experience belies the first accusation, for never in my career has one sought to marry me for my money. As to the second charge, if true, it is but further evidence of divine foresight, for if women were exactly just in their estimates of men how many of us could survive the test? Shakespeare, you will recall, has few heroes, many heroines; and Chaucer wrote a "Legend of Good Women," but none of good men. Do not assume, however, that I advocate "woman's rights." I am selfish enough to have no patience with the doctrine, for if women got all they were entitled to they'd have everything.

In conclusion:

"The thirst that from the soul doth rise
Doth ask a drink divine."

So, to sisters, sweethearts, mothers, wives, let's lift a loyal cup in spirit chastened by their love. To our sisters let us pledge a brother's strong devotion. To the wives, let us wish their husbands be but half so kind and gracious in the home as the sentiments which in public they acclaim. To our mothers let us yield full reverence, and pray their sons will be as great and good as only mothers know they will be. To our sweethearts, may they ever have the faith that's blind, and never wholly find us out. And to them all, to lovely woman, the crowning splendor of creation, let's drink the wish that life be matched with everlasting love, and romance live to touch each soul for its ennobling, and that their years glide by as soft and sweet as sound of mellow tinklings low of silver bells on summer's balmy breath across the amorous silence of a moonlit lake to ears of youthful lovers borne.